The Transition of North Carolina

FROM

Colony to Commonwealth.

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History is past Politics and Politics are present History.—*Freeman.*

The Transition of North Carolina FROM Colony to Commonwealth

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PREFACE.

This monograph is designed to show the manner in which a Commonwealth government was substituted for a provincial government in North Carolina. The conditions that operated to produce this change and the spirit in which it was effected are considered in the new light thrown upon these subjects by the publication of the Colonial Records. The monograph is essentially a study in the constitutional history of the State.

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The Transition of North Carolina from Colony to Commonwealth.

I.

THE DOWNFALL OF THE ROYAL GOVERNMENT.

The first settlers of North Carolina, fleeing from the oppression of religious bigotry or seeking simply the freedom of the forest, gave to the province a distinctive character. At times its democracy bordered on turbulence. As a Proprietary North Carolina was neglected, and little reverence was felt for Proprietary Governors. Under the direct care of the Crown, however, there was greater peace and harmony, but seldom was there a time when there was not a party sensitive to and ready to resist the encroachments of tyranny. The principle of popular sovereignty spread rapidly in New England from the township to larger communities, but this growth was longer in influencing Southern communities. They had the same spirit of Teutonic independence, but it was individualistic rather than collective as in New England. Nevertheless by 1760 the idea of popular sovereignty had taken deep root among these people of North Carolina. The principle had been frequently announced before the Revolution was thought of, but personal loyalty to the King, pride in the name of Englishmen and the infrequent exercise by England of her asserted right of absolute dominion over the colonies, permitted this idea to lie dormant. However, in 1760 this dormant principle awoke, and from that time to the outbreak of the Revolu-

tion there may be seen in the frequent opposition between the colonial assemblies and the English authorities signs of the awakening.

In North Carolina, as in many of the other colonies, there were local causes that brought the Royal Government into ill-repute. There were open mutterings of discontent, and complaints and protests were continually being sent up to the throne. In 1764 the Assembly protested against the tax on trade, and placed itself on record as to the question of colonial taxation. The armed populace resisted the enforcement of the Stamp Act, and informed the Governor that the act would be resisted "to blood and death." The agent was made to swear that he would not attempt to execute the law, while the Royal Governor looked on in helplessness. Governor Tryon saw the dangerous spirit that was developed, and endeavored to ingratiate himself into the favor of the people. He was successful in winning the good-will of many of the best men in the province, and these men helped to uphold the authority of England during his administration. Governor Tryon believed in conducting the affairs of government in a regal manner, even among backwoodsmen. Fond of display and pleasure, he made himself the leader in the sports of the day. Never had the people of the province witnessed so much refinement and extravagance as they then saw at the Governor's court. He was the most aristocratic of all the colonial Governors of the province, and prevailed upon the Assembly to appropriate funds for the erection of a Governor's palace.[1] This extra tax produced no good-will among the people. He also decided to run the boundary line between the province and the Cherokee Indians, but instead of appointing commissioners to do the work, he collected a large military retinue and crossed the State in grand and pompous style simply to run a line in the wilds of the western mountains.[2] Never before had the

[1] General Maranda, the traveller, said that the palace was the finest in the New World at that time. Martin : vol. II.

[2] So magnificent was this cavalcade that Tryon won from the Indians the soubriquet of the "Great Wolf of Carolina."

people witnessed such extravagance, and many were displeased with what seemed to them a useless expenditure of public funds. By this extravagance Governor Tryon made himself very popular among the very men who afterwards became leaders in the Whig movement. A martial spirit was trained and nurtured by the Governor's policy, but its fruit was not destined to fall into the lap of Great Britain.

During Tryon's administration great complaint was raised, especially in the back counties, on account of illegal fees exacted by the Crown officers. Previous complaints had been made during the administration of Governor Dobbs. These exactions continued till the people grew desperate, and thus the Regulator movement was born. The people had determined to submit no longer. Governor Tryon went through that part of the province with troops raised in the vicinity, but no blood was shed at the time. Two years later the movement had increased to such an extent that court could not be held in that section. The Assembly finally advised the government to take troops and march to the scenes of the disturbance. These troops were mostly from the eastern counties, and thus began the civil war of the Regulation, terminating in the Battle of Alamance, May 16, 1771. Tryon's drastic measures effectually checked the spirit of disturbance, but the influence of this internal strife was felt long afterwards. Large numbers of the Regulators emigrated beyond the mountains to new homes and lands, rather than submit to the government of North Carolina. While this civil war was the result chiefly of social and economic conditions, it helped, nevertheless, to shape political sentiment in this and other provinces.[1] It furnished the agitators at Boston with an example of resistance to England by force. It was, indeed, a lesson to the whole country that was not forgotten. Tryon wrote to the home government that a British army would be weak in this hostile country. The campaign also developed the military

[1] Bassett. The Regulators of North Carolina (A. H. A. Report for 1894).

organization of the colony. Another lesson in the art of warfare had been taught to the people. As a reward for his activity Governor Tryon was transferred to the province of New York, and his removal destroyed the influence that the Royal Government had with the aristocratic element in North Carolina society.

In August, 1771, Josiah Martin, last of the Royal Governors of the province, took up the administration. Martin was neither a statesman nor a diplomat. He had been trained in the army, and suffered from exaggerated conception of duty to his superior officers. He was a plain, blunt man, and devoid of Tryon's happy faculty for ingratiating himself into the favor of the most prominent men of the province. He allied himself rather with the disaffected, granted them pardons and visited their section of the country. With the Scotch Highlanders who kept pouring into the country he made a close friendship. He succeeded in placating the injured feelings of the Regulators and winning the favor of the Scotch immigrants. But by criticising the popular Tryon he lost the esteem of many of the best men. Governor Martin's administration had fallen within grievous times. To him Tryon bequeathed the settlement of the Regulator troubles and the payment of the expenses of the military expedition. Questions that Governor Tryon had succeeded in postponing were now coming to a head. A politic Tryon might have created even now a strong royal party, but an impolitic Martin, never. To attempt to force extreme views of the royal prerogative upon these people at this time was not only impolitic, but foolish. Under Governor Martin's administration there was a conjunction of three local causes which are ever productive of political discontent and disturbance, and often the mother of revolution. These causes were a special tax which was considered unjust, a boundary line in dispute, and an unsatisfactory judicial system. Between these shoals Governor Martin was not able to steer his vessel.

Financial Condition—Special Taxes.

The financial condition of North Carolina in 1770 was miserable. There was little gold or silver in the province. There were no mines nor mints; the balance of trade was such as to carry out again what metallic money happened to find its way into the province.

Of paper money there was only a limited amount, consisting of provincial notes of various kinds. Commodities even had been made legal tender at rates specified by law. The British Parliament had passed an act forbidding the province to issue more paper currency as legal tender. Governor Tryon appeased for the moment the disquietude that prevailed by promising to use his influence at court to secure remedial financial legislation. Not one of the currency bills, however, became a law. The question of how to pay the expenses of the Regulator campaign absorbed the attention of the Legislature. Finally, they had recourse to the creation of a new debt. Debenture notes, or simple promises to pay, were issued. There being no better currency in the country, these found no trouble in getting into circulation; counterfeit money even would have circulated.[1]

The province had contracted heavy debts. Most of the £75,000 of debts at the close of Governor Dobbs's administration had been contracted for the purpose of carrying on the French and Indian war. To this debt Governor Tryon has added some £40,000 or more, and to this was to be added £60,000 debenture notes for defraying the expenses of the campaign against the Regulators.[2]

But the feature of the financial trouble which served most to wreck Governor Martin's administration was the special tax of one shilling levied on each poll, and an impost duty of four pence on imported liquors, to meet emissions of paper currency made in 1748 and in 1754, the amount to be liquidated being £61,350. On December 6, 1771, Mr. Burgwin, clerk of the Committee of Accounts, reported to the

[1] C. R. Pref. Notes, IX.

[2] C. R. II, Pref. Notes, XVI.

Assembly an account of the public funds, in which he stated that already more than enough had been collected to pay the appropriation of £61,350; that already £53,104 had been burned in accordance with law, and that over £12,000 were on hand.[1] When the Assembly heard of this they came to the conclusion that as the object of these special taxes had been attained, therefore the taxes ought no longer to be collected. A bill was accordingly introduced for the purpose of preventing the further collection. The Governor declared that the bill was teeming with frauds; and, of course, disallowed it.[2] The Assembly expected the bill to be rejected, and girded themselves for the fight. Resolutions were proposed discontinuing the tax and indemnifying sheriffs for non-collection. These resolutions were intended to be entered upon the journals in case the Governor refused to consent to the proposed bill, but the Governor was shrewd enough to reject the bill and prorogue the Assembly at the same time.[3] But Speaker Caswell determined not to be outwitted, and, therefore, communicated the resolutions to the treasurer as an order from the Assembly, and, consequently, the taxes were omitted from the tax lists sent to the counties for collection.[4]

The Governor was indignant, and called together his Council. It was decided that a proclamation should be made ordering the sheriffs to collect these taxes, under penalty of being sued on their bonds.[5] Governor Martin claimed that the clerk's report was incorrect; that the sinking fund had not been employed for that purpose alone, but, instead, had been appropriated to various purposes; that sheriffs and collectors of taxes had become insolvent or fraudulent, and that notes redeemable by this tax were still in circulation.[6] Governor Martin was probably correct in his views; the disbursement of the funds collected had not been made for purposes of redemption.

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[1] C. R. IX, pp. 124-166.
[2] C. R. IX, p. 333.
[3] C. R. IX, p. 233.
[4] C. R. IX, Pref. Notes, XVII.
[5] C. R. IX, p. 329.
[6] C. R. IX, p. 231.

The King was highly pleased with the course of Governor Martin in putting an end to an Assembly which "acted so little upon principles of justice," and instructed the Governor to refuse his assent if Caswell should be again elected Speaker.[1] The tendency toward democracy was too strong to please either Governor Martin or the British Government. The people felt little inclination to pay debts contracted, not for their welfare, but for the maintenance of royal authority. Neither Governor Tryon nor Governor Martin nor President Hasel, of the Council, believed that the people of the province were willing to defray the expenses of the expedition against the Regulators.[2] Accordingly, the Assembly that voted the expedition was not dissolved till it had also voted the payment for the expedition, a course contrary to the instructions of Governor Martin from the home government.

The next session of the Assembly was so occupied with the Court Act that no attention was paid to the tax, but when the Assembly met again, in December, 1773, resolutions were again passed declaring that the special tax had accomplished its purpose. The Assembly went further, and on March 24, 1774, instructed the treasurer to issue orders to sheriffs not to receive from any of the inhabitants of the province the poll-tax for the year 1774, or for any subsequent year. The poll-tax was especially hard, it was felt by the poor keenly, there being no property tax in the province.[3] The collectors of the import duties were ordered to desist from collecting after May 1, 1774, under pain of the censure of the House. The Assembly further determined to indemnify any person for all damages incurred by acting in obedience to their orders.[4] Governor Martin prorogued the Assembly because of this measure of repudiation, but when it met again it returned to the fight. Governor Martin accused the Assembly of trying to arrogate all power to itself, and to abrogate solemn statute without consulting the

[1] C. R. IX, p. 301.
[2] C. R. IX, Pref. Notes, XII.
[3] Pref. Notes, C. R. IX.
[4] C. R. IX, p. 944.

Governor. From a legal point of view he was right, but with these men the distinction between legality and illegality was fast losing its significance. Financial distress forced the Assembly to show its strong hand; there resulted a sharp clash between the Executive and the Legislature, and in this state affairs remained till the end came, which was now not "more than a Sabbath Day's journey distant."[1]

But still another legacy was left to Governor Martin, in the character of the territorial boundary of the province on the south.

The Boundary Dispute.

In the year 1736, commissioners appointed by the Legislatures of North and South Carolina began to run the dividing line between the two provinces. The King had fixed the beginning of the line at the northeast end of Long Bay, and directed it to run thence, northwestwardly, to the thirty-fifth degree north latitude, and then westward to the South Seas. The line, however, had only been run sixty-four miles when it was agreed that the eastern and northeastern frontiers of the lands of the Catawbas and Cherokees should be considered the boundary line till it was further extended.[2] By 1763 the line had been extended in a westwardly direction to the Salisbury and Charleston road.[3] On December 16, 1771, Governor Martin received instructions from the King confirming the line as already run, and authorizing its extension in accordance with accompanying instructions. But the King's orders did not instruct the continuation of the line in due west course. The new instructions were that the further extension of the line should be from a point further north. In 1768 Governor Montague, of South Caro-

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[1] Some money collected on account of this special tax was in the treasury when the Third Provincial Congress met at Hillsboro in Aug. 1775. It was ordered to be returned to the payers or accepted in payment of future taxes. C. R. X, p. 175.

[2] Martin II, 26. [3] C. R. IX, p. 191.

lina, had proposed to Governor Tryon the running of a permanent boundary line, but Tryon condemned the proposed line as ruinous to the province, and wrote to the home government setting forth his objections. Montague was in favor at the Court, and so secured instructions describing the permanent boundary line as he had designed it. Such was the standing of the boundary dispute when Governor Martin received his instructions respecting it.

Governor Martin immediately communicated with the Assembly, and asked for appropriations for the purpose of carrying out the instructions. He seemed anxious to carry them out, but the Assembly was not pleased with them, for it meant a loss of territory.[1] This proposed line would dismember from the northern province a well-peopled and flourishing tract of country.[2] This land was in great demand at that time among new settlers, and the Governor received considerable emoluments from the grants he had issued.[3] Though the proposed line was injurious to Governor Martin's income, as well as to the province, he took immediate measures for extending it. But the Assembly refused to make the appropriations asked for. They replied to Governor Martin's request by saying that the plan had been brought before a former Assembly and had been considered so injurious to the province that Governor Tryon used his influence against it, and they requested him to declare to His Majesty that it would deprive them of a great many useful inhabitants, by law and custom engrafted into their Constitution, would counteract a number of established laws, and

[1] The instructions were that commissioners should proceed jointly with commissioners from South Carolina to continue the "line up the Salisbury road to where it entered the Catawba lands; from thence along the southern, eastern and northern boundary of the said lands to where the Catawba river entered them on the north; from thence, to follow the middle stream of said river northerly to the confluence of the northern and southern branches thereof, and thence due west till it reached the line agreed upon with the Cherokee Indians." C. R. IX, p. 191.

[2] Letter of Governor Martin, C. R. IX, p. 49. [3] C. R. IX, p. 49.

take from the province many tracts of valuable land then held by grant from the Governor of North Carolina, and that it would almost destroy their trade with the Indians. They further declared that they had spent enough in running boundary lines, and were not willing to burden their constituents more heavily. So they appointed Howe, Harnett and Maurice Moore a committee to address the King,[1] December 21, 1771.

Governor Martin was not tactful, nor did he know when to temporize. Disregarding the feelings of the Assembly, he appointed commissioners to run the line in accordance with the new instructions. This the commissioners did in the summer of 1772. Governor Martin was never pleased to meet the General Assembly, so there was no meeting in the year 1772. When the Assembly met in March, 1775, Governor Martin requested that his commissioners be paid for their service in running the line, and also told the Assembly that the King was displeased at their conduct of the last session in intimating that the throne had a predilection for South Carolina, and had not at heart the general interests of the two Carolinas.[2] But the Assembly refused to pay the expenses of the commissioners, saying that instead of gaining, the province had lost millions of acres of land, and that South Carolina might pay it, since she alone had profited by it.[3] The Assembly refused to make the allowance[4] or to approve the line, and reminded the Governor that the province had just incurred a debt of £60,000 in sup-

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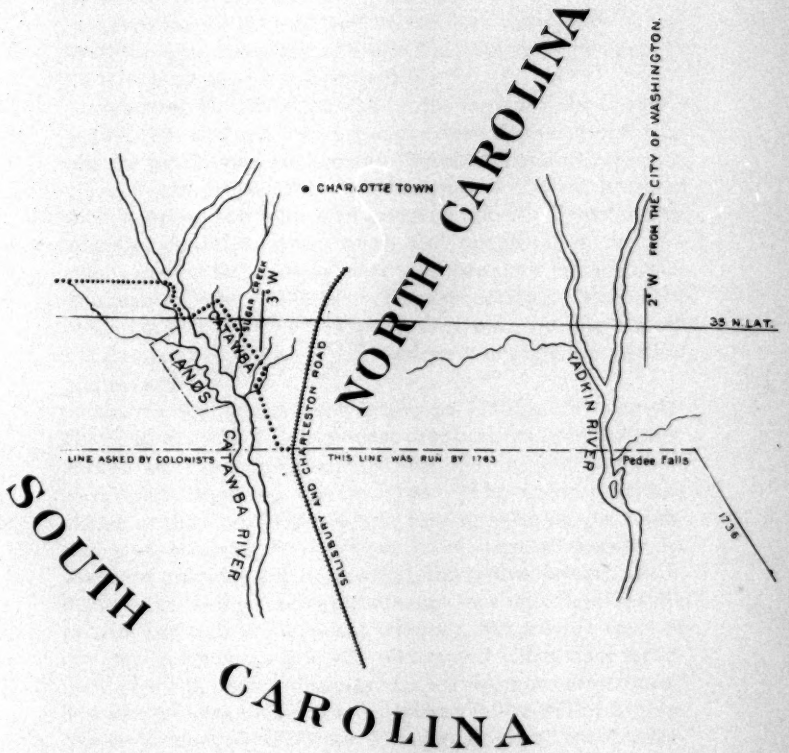
[1] C. R. IX, p. 212. [2] C. R. IX, p. 562.

[3] Before the line was run, South Carolina had agreed to pay all expenses. Letter from Governor Martin, C. R. IX, p. 638.

[4] Thomas Polk, of Mecklenburg, was popular in both branches of the Assembly. He was appointed a Commissioner, but the Assembly refused Governor Martin's request to pay him, declaring at the same time that any person who would engage in such an enterprise was no servant of the province and therefore entitled to nothing from it. Polk's popularity could not save him from the condemnation of the Assembly. C. R. IX, 500 Jones: 80.



THE DISPUTED BOUNDARY.

LINE IN DISPUTE.....

pression of the Regulator insurrection against His Majesty's government, and that they felt excusable for refusing to incur any further expense.[1] The Assembly was anxious to compromise the dispute, and declared its willingness to pay even the whole expense of a new line, but remained firm in its refusal to pay for the present line.[2]

Governor Martin spoke well of this region of the province at first, but now his letters became very denunciatory, calling the inhabitants lawless and licentious banditti, who disclaimed the jurisdiction of either province when it suited their purpose and who paid taxes to none.[3] These border counties doubtless were rough and uncultivated, but few things appeal to a people more strongly than injustice that diminishes their territory. The succeeding Assemblies made no mention of the dispute; they were waiting for the royal answer to their petition, and were engaged in another controversy.

The Constitutional Convention at Halifax in 1776 declared in the Bill of Rights what the southern boundary line should be. The line described was the line that the commissioners began to run in 1738.[4] The authors of this clause in the Constitution knew very little about the boundaries of their own State, or were very magnanimous to the southern province, for the parallel, thirty-five degrees north, declared to be the southern boundary, not only deprives the province of half the disputed territory, but a large tract of country to which its title was undisputed. The final settlement of the boundary disputes was left for more quiet times. The line remains today, not as declared in the Bill of Rights, but very much as Governor Montague's royal commission prescribed it. North Carolina is indebted to King George III for the marked irregularity of the southern boundary in the vicinity of the Catawba river, and not to fear of the Indians as local legend has it to this day.

But there was still another inheritance, whose conse-

[1] C. R. Vol. IX. p. 563.
[2] C. R. IX, p. 578.
[3] C. R. IX, p. 312.
[4] Martin : II, p. 26.

quences were more important than the others, and this was a phase of the Judicial System.

The Court Controversy.

Too little stress has been laid upon the influence of economic conditions in bringing about the disruption of the established systems of government in the American colonies. In North Carolina social and economic causes served to irritate and exasperate the feelings of the people. To be robbed of a portion of their territory was a crime they could not excuse, and for their own Governor to be *particeps criminis* was an affront not calculated to allay their feelings. Compulsion for the payment of special taxes intensified the discontent, and the causes of financial distress were laid at the door of the government. The colonists saw that the larger share of their indebtedness had been contracted for the purpose of maintaining the government of Great Britain, and that that same government in return had refused their prayers and insulted their dignity as a free province. But these economic causes did not furnish the means of striking at the government in so vital a part as did a judicial question which now came into prominence. This question precipitated matters in North Carolina and locked the wheels of administration. The judicial system was ever a fruitful cause of complaint and grievance in the province. It had vexed the administration of Governor Dobbs, and had been a subject of legislation under Tryon.

Of all the questions that arose to vex Governor Martin, the most troublesome was the controversy about the courts. It arrayed against him the legal profession and a large portion of the office-holding class, and in the end the Governor had to succumb to the opposition.

The Provincial Court System.—The Common Law Courts, constituted for the better administration of justice in the province, were three in number—the Superior Court, the Inferior Court and Magistrate's Court.

(a) *Superior Courts.*—The province was divided into several districts, usually six or seven. In each of these districts a court was held twice a year generally, and was presided over by the Chief Justice of the province and by the Associate Judge of the district sitting jointly, or by either in the absence of the other. Frequent disputes arose as to the power of an associate judge. When the last Royal Governor came to the province in 1771, there were the Chief Justice and two Associates appointed by the Governor.[1] In the Chief Justice and his Associates were lodged all the powers usually vested in the King's Bench and Court of Common Pleas in England. Their jurisdiction extended to all matters at Common Law above twenty pounds currency in civil actions, and to those in criminal actions where life or limb were concerned. This court was also a Court of Appeal, and might issue letters of administration; it had equity jurisdiction in common with the Court of Chancery. The Chief Justice frequently had the power to appoint clerks in all the districts.

(b) *Inferior Courts of Pleas and Quarter Sessions.*[2]—This was a court both of law and equity, and was held four times a year in every county of the province. This court was composed of the justices of the peace of each county, and its jurisdiction was limited. In civil actions it was generally restricted to twenty pounds in currency. This court had the power to fine, imprison, inflict corporal punishment, such as pillorying and whipping. Though their powers were restricted, they were very important. These courts granted orders for the administration of intestate estates, just as the Superior Court took bonds and securities, probated wills and granted letters testamentary. Deeds for personal and real estate were filed mostly with this court. In causes under five pounds they decided without a jury. These courts had charge of county officers in general. The judges held their commissions from the Governor. They received

[1] Jones: 84.

[2] C. R. Vol. VIII, pp. 479, 480.

no pay. The offices were much sought after by the very best men, as it gave them an influence in public affairs.

(c) *Justices' Courts.*—In every county there was a large number of "Conservators of the Peace." Governor Tryon estimated in 1767 that there were at least 516 acting justices in the province. Their commissions were issued by the Governor. Their jurisdictions were limited to debts or demands of not more than forty shillings generally, but an appeal lay from their decrees to the Inferior Court, which was simply the meeting of the justices in a body. The Lower House of the Assembly was largely composed of justices of the peace, and this fact largely accounts for the very active interest always manifested by this body in all Court Laws.[1]

Instability of the Court Laws.—The legislative power of the province resided in the Governor, representing the Crown, the Council acting as the Upper House, and the Lower House representing the people. The Governor could not initiate legislation, but could negative it. The laws, when passed, were forwarded to the Crown for approval or rejection. The Crown thus held a definite check on colonial representation. The Court Laws were temporary, and their existence was generally limited to a certain specified period, as to the close of a certain session of the General Assembly. The periods were commonly no longer than two years.[2] This necessitated frequent legislation, which, with oft-recurring agitations, familiarized the province with the meaning of the laws. When a new court system was to be produced, complaints were always brought forward. The question of how the judges should be paid always disturbed their deliberations. The Lower House was anxious that the judiciary should not get beyond their control, and they saw that they could best control the system through the salaries of the judges. There was also a contest over the jurisdiction of the associate judges. Such

[1] C. R. Vol. VII, p. 481. [2] Martin: Vol. II, p. 169.

disputes worried the closing days of Governor Dobbs.[1] In all these contentions the province was largely successful. No political subject had been so much discussed as the court system under the Royal Governors.

The Tryon Court Law of 1768.—When Governor Martin, the last of the Royal Governors,[2] came to the province in 1771, he found the court system established under Governor Tryon in vogue. Governor Tryon, though he had had to contend with the civil war of the Regulation, was still regarded with feelings of respect and friendship by the men who at a later day composed the patriotic party. The Court Laws passed under his administration were an improvement upon any former system. The general features of the act were the same, but it was made more permanent. Its duration was extended to five years instead of to two, as formerly. There was an addition made, which seems to have attracted little notice at the time, but which was destined at the expiration of the act to be the cause of very important results.[3] This clause was the one pertaining to *foreign attachments.* "A Foreign Attachment is that process by virtue of which the property of an absent debtor is seized for the purpose of compelling an appearance, and, in default of that, to pay the claim of the plaintiff."[4] By this clause in the Court Law the province acquired a right to attach the effects of foreigners and non-residents for debts contracted, whether such foreigners or non-residents had ever resided in the province or not. When the law was about to expire in 1773, there began a warfare which was to continue till the royal power became too weak to wage it longer. This was the rock on which provincial government came to shipwreck.

Royal Instructions to Governor Martin.—The new Assembly under Governor Martin convened in New Berne, January, 1773. The Lower House elected for its Speaker John

[1] Jones' Defense, p. 83.
[2] Martin's Hist. North Carolina, Vol. II, p. 231.
[3] C. R. Vol. IX, p. 373.
[4] Bouvier's Law Dict., Vol. I, p. 599, Liber Albus, 183.

Harvey, one of the leading Whigs of the province. In the Lower House for twenty years the test of "loyalty to the people" had been opposition to the prerogatives of the Governor.[1] This Assembly contained many of the best and wisest leaders in the province, such men as Hooper, Caswell, Ashe and Johnson were in the Assembly.

In his address at the opening of the session, Governor Martin stated that the King had granted pardon to all those engaged in the Regulation rebellion, and that he himself had traveled through their section during the last summer and saw no signs of discontent. Governor Martin entered upon his duties under auspicious circumstances. This address drew attention to the fact that the present Court Laws establishing Superior and Inferior Courts would expire at the end of this session of the Assembly.[2]

The Assembly appointed a select committee to frame a Court Law, and it also furnished instructions how they should frame it. The Assembly instructed them to make provisions in one bill for the establishment of Inferior and Superior Courts, and to vest the power of granting letters of administration and testamentary in the Inferior, to the exclusion of the Superior Courts, and to extend the jurisdiction of single magistrates to causes of the value of five pounds.[3] This committee made their report, and in it was contained the foreign attachment clause. The Governor learned of it, and sent to the Assembly a copy of his instructions from the Crown. The instructions were as follows:[4] "Whereas, laws have been passed in some of our colonies and plantations in America, by which the lands, goods, chattels, rights and credits of persons who have never resided within the colonies where such laws have been passed, have been made liable to be attached for the recovery of debts, in a manner different from that allowed by the law of England in like cases; and whereas it hath been represented

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[1] Jones: 80.
[2] C. R., Vol. IX, p. 378.
[3] Martin: p. 294.
[4] C. R. Vol. IX, p. 235.

unto us that such laws may have the consequence to prejudice and obstruct the commerce between this Kingdom and our said colonies, and to affect public credit, it is therefore our will and pleasure that you do not, on any pretense whatsoever, give your assent to or pass any bill or bills in our province under your government, by which lands, tenements, goods, chattels, rights and credits of persons who have never resided within our said province shall be made liable to be attached by recovery of debts due from such persons otherwise than is allowed by law in cases of a like nature within our Kingdom of Great Britain, until you shall first have transmitted to us by one of our principal secretaries of state, the draft of each bill or bills, and shall have received our royal pleasure thereupon, unless you take care in the passing of such bill or bills that a clause or clauses be inserted therein suspending and deferring the execution thereof until our royal will and pleasure shall be known thereupon."

Foreign Attachments in England.—The right of Foreign Attachments in England was a very old municipal privilege. London, York and Bristol had held it by ancient custom. The process of the attachment seems to have been originally to compel the appearance of the defendant by sufficient sureties to answer the plaintiff's demand upon him. It was justly considered that the merchants of great mercantile cities would have debtors resident in foreign countries, with no means, except by their property in the city, of rendering them amenable to the English courts of justice.[1] This privilege enabled the creditor to attach the money, debts or goods of his debtor in the hands of a third person, and so to deprive the owner of all control over the subject of the attachment until he "appears to answer the claim of his creditor or until the debt is satisfied."[2] In London, the Lord Mayor's Court had jurisdiction over such

[1] Wolsey: Foreign Attachments, p. 23.

[2] Locke: Law and Practice of Foreign Attachment in Lord Mayor's Court, p. 19.

questions. The right of Foreign Attachment was considered the most important power possessed by suitors in this court.[1] It was an advantage to a commercial community, to be readily able to apply the property of an absent debtor, wherever it might be found, in payment of his creditor. It was particularly beneficial to a city much frequented by foreigners who might contract debts and then remove beyond the jurisdiction, beyond the power of personal process. It also placed great power in the hands of creditors, enabling them to lay an embargo upon the goods of their debtors which could not then be employed in the discharge of any commercial engagement with third parties until the attachment was removed. The right of Foreign Attachment was one always renewed by the Crown to the city, and one for which the city corporation always contended.[2]

The Upper House, or Council, was well disposed generally to any measure favored by the Crown. They held their offices by Royal appointment. But the Lower House seemed to feel that they owed allegiance only to their constituency. Though their messages to the Governor were always couched in language expressive of devotion to the Crown, their actions were very independent. This House refused to give up the attachment clause. They maintained that it was highly inconsistent with the commercial policy of the province to relinquish its benefits; that it was their only means of security against non-resident creditors; that the privilege was enjoyed by many, if not all of their sister colonies; that certain municipalities in Great Britain enjoyed the same, and that they could discover nothing in their Constitution to justify a treatment so injurious to them. The House was very much excited over the subject, and their communications contain lengthy arguments in justification of their course. They felt that their province was not receiving just and equal treatment. In reply to a message from the Council they said that the bill as proposed by the

[1] Locke: p. 19.
[2] Bohun: Privilegia Londoni, pp. 254, 255.

Council would guard the effects of persons resident in neighboring colonies, but that their own would at any time be subject to attachment.

If the Crown thought to deceive the province by granting them the right to make such laws as were found in the laws of England, the Crown itself was deceived. The House passed resolutions that it was the sense of the body that by the laws and statutes of Great Britain no provision whatever was made for attachments; that the privilege existed as a municipal franchise governed by particular circumstances of place and people, and so essentially local in application as not to permit being extended by any analogy to the province.[1] The Council took the ground of expediency, that if the clause were not *deled* there could be no Court Law passed, and that the royal instructions to the Governor were very explicit; but the Council's arguments failed to move the House. The House replied that while they felt the many disadvantages that would arise from a failure to pass the laws, they were also conscious of the many benefits that had accrued to them from the rights they had enjoyed, and that they were unwilling to part with them and would suffer first.[2] After much wrangling a bill was passed by both Houses containing the attachment clause. The Governor signed it with a suspending clause till the royal will was known. The firmness and determination of the House had won in the first battle.

But the contest raged as warmly as ever. Some immediate measures were necessary, so separate bills were introduced for the establishment of Superior and Inferior Courts. The bills had passed several readings when the Council added an amendment to the Superior Court bill exempting from attachment the estates of persons who had never resided in the colonies. This occasioned the parting of the ways again. The House refused to accept any amendment of that kind. After disputing for several days, the Council

[1] C. R. Vol. IX, p. 436.
[2] C. R. Vol. IX, pp. 558, 559, 560.

refused to pass the Superior Court bill; the Inferior Court bill was passed, but the Governor refused his assent.[1] This destroyed the last hope of sustaining the administration of law. On Saturday, March 6, 1773, the House came to the unanimous resolution that the right of attaching the property of non-resident creditors had long been exercised by this province in common with other colonies in America, and several trading cities in England; they also ordered that this resolve and all communications respecting the subject which had passed between them and the honorable Council be published in all the gazettes in the province, in Virginia and in South Carolina, and that the Clerk of the House see this resolution put into execution.[2]

When the Governor heard of this he prorogued the Assembly till Tuesday, the 9th, to give them time to calm their excitement.[3] When Tuesday, the 9th, came, there was no session of the Assembly. The Governor called together his faithful and submissive Council and announced to them that the Clerk of the House had advised him that there were not members enough in town to make a House. The Governor and his Council agreed that fifteen constituted a quorum, according to royal instructions. Accordingly, the Governor sent a message addressed to the Speaker of the House of the Assembly informing him that fifteen constituted a quorum, and that he, the Governor, was ready to proceed to business. Speaker Harvey replied immediately to this message that it was the opinion of the members of the House then in the town, that it was not consistent with the duty owed to their constituents to proceed to business without a majority of the representatives of the people.[4] The Governor could not realize that the members would simply take their departure without consulting him, and leave him alone to govern the colony. So after advising with the Council, he sent the following message to Speaker Harvey: "I de-

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[1] C. R. Vol. IX, p. 534; Martin: pp. 293-298.
[2] C. R. Vol. IX, p. 581. [3] C. R. Vol. IX, p. 587.
[4] C. R. Vol. IX, p. 595.

sire to know whether you have or have not the expectation or assurance that more members of the House Assembly than are now in town will appear this day to carry on the public business of this county."[1] Speaker Harvey replied at once that he had not the "least expectation of the arrival of any more members, and that most of those in town were preparing to return home." In this emergency, there was no alternative but to dissolve the Assembly. When the Council had met and considered how the "Assembly had deserted the business and interests of their constituencies and flagrantly insulted the dignity and authority of government," it was decided that the Governor should at once issue a proclamation dissolving the Assembly. This the Governor did March 9, 1773.[2]

The Executive and the Legislature had come to a complete and open rupture. The Legislature had refused to make laws, so there were none to be executed. The dissolution of the Assembly left the province with no form of government but a Governor not responsible to it, and his faithful Council.

Governor Martin wrote on April 6, that the regular course of law was suspended by his refusal to sign the Acts of the last Assembly for establishing courts.[3] The condition of the province was peculiar. There were only five provincial laws in force throughout the colony. There were no courts in existence except the Magistrates' Courts. No one could recover a debt except before a single magistrate, whose jurisdiction was very limited. Offenders escaped with impunity. The people were in great consternation about the matter, and what the consequences would be was problematical.[4] The country was in a very unenviable position. The vicious felt that all restraint was now removed, and hence the gaols were soon filled.[5] In civil affairs, the intelligent referred cases in dispute to the gentlemen of the bar for adjudica-

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[1] C. R. Vol. IX, p. 595. [2] C. R. Vol. IX, p. 625.
[3] C. R. Vol. IX, p. 625. [4] Quincey's Journal, C. R. Vol. IX, p. 611.
[5] C. R. Vol. IX, p. 686.

tion.[1] Governor Martin felt the difficulty into which the province had fallen, and sought for means to remedy it. He issued Commissions of Oyer and Terminer for the trial of criminals in the several gaols of the province. In making his appointments of justices to assist the Chief Justice in holding these courts, Governor Martin displayed more tact than usual. Maurice Moore and Richard Caswell were prominent leaders of the Whig movement, but Governor Martin appointed them associates to hold courts of Oyer and Terminer. According to Governor Martin's statements, these courts helped to maintain order. Anyhow they were very active, for in a few months ten persons had suffered for capital offenses.[2] But Governor Martin found little repose. He wrote to Earl Dartmouth that there was a class of "restless politicians who drew into question the legality of such courts, who claimed that the consent of the Assembly was necessary to create any court, and that the power to issue the commissions was a part of the royal prerogative, which was incommunicable." Thus things continued during the summer and autumn of 1773.

Governor Martin, when he dissolved the Assembly on March 9, issued writs of elections, returnable May 1 following. He observed, however, that the same representatives for the most part had been re-elected. This expression of approval on the part of the people caused him to postpone calling the Assembly from May till December, 1773.[3] The measure for which he had prorogued them had induced their constituents to return them. The opposition to the Royal Government was strengthened during this interim. The Courts of Oyer and Terminer were regarded as illegal. The news that the Crown had refused to permit the Court Bill with the suspending clause to become a law made the people feel that little was to be expected from the government.

The new Assembly met December 4, 1773. Governor Martin's address was almost wholly taken up with the court

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[1] Life of Iredell, Vol. II, p. 152.
[2] C. R. Vol. IX, p. 687.
[3] C. R. Vol. IX, p. 686.

question. The Council was still obsequious to the Governor, but the House was determined to oppose his prerogative. Governor Martin informed the Assembly of his instructions, and stated plainly the only principles on which a Court Law might be established and meet the approval of the Crown. The instructions were conciliatory in tone, and granted that provisions might be made for attachment where the cause of action arose within the province, but with this proviso, that due proof had to be made upon oath, before such attachment issued, that the defendant absconded to avoid payment of debt, and that the ordinary process could not be served upon him.[1] As to the limitation of the original jurisdiction of the Superior Courts and the extension of that of the Inferior Courts, the Crown deemed that totally inadmissible, but the Inferior Court was granted a slight extension of jurisdiction.[2] The Governor also recommended that provisions be made for the payment of the judges who had held Courts of Oyer and Terminer.[3]

The Council made a reply, thanking the Governor for the free and frank communication of the terms on which a court system might be organized, and approving his establishment of Courts of Oyer and Terminer.[4] The answer of the House had a different tone. They replied that they would hasten to frame laws for the establishment of Courts of Justice in such a manner as best suited the convenience and situation of their constituency; that they did not deem the mode of attachment recommended sufficient, and therefore they could not adopt it; that the power of issuing Commissions of Oyer and Terminer could not be carried into execution without the consent of the Legislature, and hence they could not, consistent with the justice due their constituents, make provision for defraying the expenses attending a measure which they did not approve.[5]

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[1] C. R. Vol. IX, p. 707.
[2] C. R. Vol. IX, p. 708.
[3] C. R. Vol. IX, p. 708.
[4] C. R. Vol. IX, p. 711.
[5] C. R. Vol. IX, p. 738.

The Council urged the House to accept the bill, even on the grounds of expediency; that it contained ample provisions for the administration of justice; that it was an inestimable good which the representatives of the people were rejecting for the comparatively small advantage supposed to lie in the proceeding by attachment, and that if they withheld their consent they would soon find that the wretchedness of the country was not half complete. But the House paid little regard to the argument of expediency. They were not versed in those means by which principles are held in abeyance for the sake of expediency. They replied that they had been sent there by their people, and that they proposed so to guard their privileges and rights as to preserve them inviolate to the present age, and transmit them unimpaired to posterity; that they regretted the unhappy consequences that attended the extinguishment of civil and criminal jurisdiction in the province; that they dreaded the continuance of the calamity, but would submit still to suffer in order to avoid a greater misfortune, and that they did not reproach themselves for past grievances, for an impartial world would do them the justice to own that they contended for nothing more than what they had till lately enjoyed in common with the other colonies. The House also adduced arguments showing that the attachment clause was essential to the happiness and prosperity of the colony.[1] On the 20th December this message was ordered to be sent to the Council.

The next day the House received a verbal message from the Governor requiring their immediate attendance at the palace. But "immediate attendance" were words ominous to the House. They were familiar with the sudden prorogations of Parliaments, so they resolved unanimously to appoint a committee to prepare an address for the King, setting forth the deplorable condition of the colony, and their reasons for insisting on the privilege of attachment. They further resolved that this committee should present the peti-

[1] C. R. Vol. IX, pp. 729-732.

tion not through their own Governor, but through Governor Tryon, of New York, who had formerly been Governor of North Carolina. This probably was an intended slight toward Governor Martin.[1] His letters at this time show that he was somewhat jealous of the reputation and popularity that Governor Tryon had won in the colony.

The House waited upon his Excellency at the palace, where he informed them that he had seen so much time wasted by them and such great expenses incurred in vain, that he thought any longer attendance was to no purpose, since they had refused to adopt any plan for the administration of justice with which he had it in his power to comply; that they might now go home and consult their constituencies, and state to them candidly the principles for which they contended, and ask them if they were willing to relinquish all the blessings, all the advantages, and all the securities for their lives, in a contention for a certain mode of proceeding against debtors.[2]

So the Assembly was prorogued on the 21st December, 1773, after a fruitless session of seventeen days.

There was now left in the colony not even a Court of Oyer and Terminer. Royal authority had grown impotent. The temper of the House had been such that Governor Martin wrote that he prorogued it to keep them from passing still more outrageous measures.[3] So long without courts, disorders must have continued to increase and men to lose respect for law.

When the Assembly met again Governor Martin addressed them concerning the Court Laws. He said: "I cannot doubt your wishing for opportunity to deliver it (the county) from the disgrace and ruin to which it is now and has been long exposed, by the total privation of every judicial power, and that you will, with true public spirit, postpone all lesser considerations to the redemption of its credit and reputation. I presume I meet the Assembly fully in-

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[1] C. R. Vol. IX, pp. 786, 787. [2] C. R. Vol. IX, p. 779.
[3] C. R. Vol. IX, p. 791.

formed of the sense of its constituents relative to the difficulties that have arisen concerning the Court Laws, and which unhappily rendered your last two sessions abortive, and I shall rejoice to find it inclines the representatives of the people to accept the modifications I proposed at the last session with respect to attachment. But if, contrary to my wishes, they are still deemed inexpedient, I have that confidence in your regard for the welfare of this province that you will not longer make the obtaining of a point (that you know is utterly out of my power to yield), the indispensable condition of passing laws for the general administration of justice. * * * * The law of attachments in every other colony, so far as I have been able to inform myself, makes no part of the general plan for the distribution of justice. * * * Because it has been for a few short years woven into the temporary Court Laws here, it surely does not seem either necessary or expedient that it be still incorporated in those fundamental constitutions." He urged that some court system be established, however meagre, to save the colony from becoming the prey of rapine and violence.[1]

The Council in reply stated their position very clearly, viz.:—that if the attachment law contended for was of ever-so-great, acknowledged utility, they could see no reason, in order to obtain it, for abandoning all they possessed to rapine and disorder, and that they were ready to engraft into the establishment of courts the attachment law upon the terms proposed by His Majesty, or leave it hereafter to be modified when His Majesty's pleasure should be again signified.[2]

The House expressed itself in reply to the Governor's message in its usual bold and determined style. Their answer was: "We came to the last session of this Assembly fully possessed of the sentiments of our constituents; we have, however, appealed to them again, consulted them, and

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[1] C. R. Vol. IX, pp. 831-834. [2] C. R. Vol. IX, p. 835.

stated to them candidly the point for which we contended; we have also informed them how far His Majesty is disposed to indulge our wishes * * * We have the heartfelt satisfaction to inform your Excellency that they (the people) have expressed their warmest approbation of our past proceedings, and have given us positive instructions to persist in our endeavours to obtain the process of foreign attachments upon the most liberal and ample footing." They insisted further, that the other colonies had the privilege of attachment whether it was in their general system or not.[1] The House showed no signs of weakening in the position they had held throughout.

A committee of its best men was appointed to prepare a Court Bill. The bill was prepared according to the usual manner, and contained the forbidden attachment clause. The Council refused to pass it, and the two Houses exchanged several messages pointing out the reasons for their respective actions. After a long discussion the Council and the House were about to agree to an amendment, which did not affect the principle of foreign attachments, but only the wording of the clause, when the Governor sent copies of his instructions from the Crown to the Council, which forbade his acquiescence in measures of that nature.[2] He expressed the hope that the Council would find it inconsistent with their duty to the King to advise him to offend against instructions.[3] Nevertheless, on March 15 the Council, tired of its hopeless struggle, agreed to the House bill as amended, and the bill passed its last reading.

The Governor was now left alone. His long, faithful and subservient Council had deserted him. Both Houses then passed a resolution, without a dissenting voice, that they had pursued every useful measure to relieve the colony from its distressed condition. The Court Bill was presented to

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[1] C. R. Vol. IX, pp. 879-880.
[2] Martin: Hist. North Carolina, Vol. II, pp. 223, 224.
[3] Martin: Vol. II, p. 223.

the Governor for his signature, but in obedience to his royal master he withheld his consent.[1]

The Assembly continued their deliberation, and came to an agreement on bills for establishing Inferior Courts of Pleas and Quarter Sessions in each county, and Courts of Oyer and Terminer and General Gaol Delivery, but the jurors for the latter were to be selected by the Inferior Court.[2] These separate bills were presented to the Governor for his signature. Despairing of any better system, though fearful of incurring the ill-will of the King, Governor Martin gave his consent.[3] These two courts were very inefficient for the due administration of justice. The Inferior Courts were limited in jurisdiction to twenty pounds, affording the people no recourse for larger amounts.[4] The Criminal Courts were made dependent upon them.[5] The Superior Courts had exercised the control over the collection of the royal revenues, but now their collection was left to depend upon the collectors only.[6] Governor Martin called it a "new-fangled and inadequate plan," that would soon discover its own nakedness and induce the adoption of a better.[7] He prorogued the Assembly on March 25 till May 25, 1774.[8]

The Inferior Courts and Courts of Oyer and Terminer went into operation. The Courts of Oyer and Terminer, the last hope of the royal judges of North Carolina, were to meet an untimely end. While a Court of Oyer and Terminer was in session at Wilmington, Maurice Moore, who had lately been judge, objected to the commission of the court on the ground that the provincial law which created the court gave to the Chief Justice the powers of Oyer and Terminer and *General Gaol Delivery*, but the clause which empowered associates to act in his absence gave them only

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[1] C. R. Vol. IX, p. 862; Martin: Vol. II, p. 325.
[2] C. R. Vol. IX, p. 945.
[3] C. R. Vol. IX, p. 946.
[4] C. R. Vol. IX, pp. 947, 1009.
[5] C. R. Vol. IX, pp. 947, 1009.
[6] C. R. Vol. IX, p. 947.
[7] C.R. Vol. IX, p, 966.
[8] C. R. Vol. IX, p. 950.

powers of Oyer and Terminer, and not *Gaol Delivery*, and that, therefore, the Governor had exceeded his power in granting to the associates the Commission for Gaol Delivery; and also that the commission was to try for the "district of Wilmington," when no such district was known to law. The associates sustained Moore's contentions and adjourned. The commission was so full of defects that they seemed intentional. These blunders and defects were charged to the Assembly.[1] The Chief Justice, Howard, was very unpopular in the province. He came to the province from Rhode Island, where he bore a very unsavory reputation. There was little inclination to place much power into his hands.[2]

It had been the expressed intention of Governor Martin to meet the Assembly in May, 1774, but considering the unruly character of its members, he decided that it was useless to summons such an Assembly. The intention of the Governor not to call the Assembly together as usual in the fall soon became known throughout the colony. As early as April, 1774, we find John Harvey, the Speaker, in a "violent mood" because it was reported that Governor Martin had said that he would not call another session of the Assembly till there was some chance of a better one than the last. John Harvey also declared that he was for assembling a convention independent of the Governor, and that he would lead the way and issue hand-bills under his own name.[3]

During the summer a feeling was growing that the cause of one colony was the cause of all. Hooper wrote, on April 26, 1774, that the colonies were striding fast toward independence, and ere long would build an empire upon the ruins of Great Britain.[4] A vessel loaded with provisions was sent by the people of the Cape Fear country to the suffering citizens of Boston.[5] The failure of Governor Martin to call together the Assembly closed up this avenue for an expres-

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[1] Life of Iredell, Vol. I, p. 201. [2] Jones: p. 99.
[3] Jones: p. 124. [4] Life of Iredell, Vol. I, p. 197.
[5] Life of Iredell, Vol. I, p. 201.

sion of the feelings of the province, but others were created to take its place.

The freeholders of various counties met and proceeded to elect deputies to represent them at the Provincial Congress which John Harvey had called to meet at New Berne on August 25, 1774.[1] These freeholders declared that as the Constitutional Assembly for the colony was prevented from exercising their rights of providing for the security of the liberties of the people, that right again reverted to the people as the foundation from which all power and legislation flowed.[2] The people were alarmed and dissatisfied. There were no courts of justice sufficient to sustain property. The legal profession was left without practice, and hence more readily embraced the principles of the Revolution and became its leaders in North Carolina.[3] Governor Martin had issued his proclamation August 13, complaining of these meetings of the freeholders, which had been held without authority, and in which plans had been entered into derogatory of the King and of Parliament. Governor Martin, by his refusal to summon the assembly, closed up the legitimate avenue of legislation, but at the same time he awakened to increased activity the county committees which had been appointed in the previous year for the purpose of inquiry and correspondence.[4] These committees swore allegiance to the King, but they also swore they would maintain their rights against a wicked ministry, and never become the slaves of any power on earth.[5] The Governor's

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[1] Wheeler: Vol. I, p. 64. [2] C. R. Vol. IX, p. 1030. [3] Jones: p. 124.

[4] These committees were instructed to obtain the earliest information of Parliamentary Acts relating to the American colonies and to investigate on what authority the Court of Inquiry in Rhode Island sent persons beyond the seas to be tried for offenses committed in America. The same Assembly sent a circular letter to all the colonies thanking them for the patriotic stand taken in defense of their country's rights.

[5] They appointed patrollers to watch suspected persons, to disarm the slaves and sell the arms at public auction, the proceeds to go to the Church. C. R. Vol. X, 63. They observed the 20th July as a fast

proclamation did not deter them from assembling. They felt that the right to assemble together could be taken away from them by no magisterial mandate. All during the summer of 1774 they were holding their meetings, and when Harvey summoned the meeting of the deputies they proceeded to elect them.

The first Provincial Congress assembled at New Berne, August 25, 1774, despite the threats and proclamations of the Governor. The sessions were held almost in his very presence, but no attempt was made to disturb the meeting.[1] This Congress clearly set forth the issues between the government and the province, and declared its position.[2] The Continental Congress was approved, and Hooper,[3] Hewes and Caswell elected delegates. The Congress instructed its delegates to maintain a firm and resolute defense of person and property against all unconstitutional encroachments. It also agreed to abide by the action of a Continental Congress, and to have nothing to do with any person who would not do likewise. Having elected their delegates to the Continental Congress, the deputies arranged for another meeting,

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day and had a sermon on some appropriate subject. Rev. Mr. Reed refused to preach, and so one of the committee delivered an address. Reed was suspended. C. R. Vol. X, 116.

[1] Martin called together his Council to consult on what were the best steps to be taken. The Council replied "Nothing can be done." C. R. Vol. IX, p. 1041 *et seq.*

[2] They declared allegiance to the House of Hanover, and also that the conduct of Parliament forced them to declare their sentiments lest silence should be construed to mean submission, that no person should be taxed without legal representatives. They approved the course of the people of Boston and reprobated the Boston Port Bill, claimed trial by jury, joined the importation agreement and threatened to cease exportations.

[3] Mr. Hooper, despite the aspersions of Mr. Jefferson, in his declining years, was a prophet of the Revolution. On April 26, 1774, he wrote his friend, Iredell that the colonies were fast striding toward independence and ere long would build an empire on the ruins of Great Britain. He had studied law under James Otis. Life of Iredell, I, p. 197.

adjourned and returned to their homes to await the action of the Congress. North Carolina had now fallen into line with the other colonies, and her attention became absorbed in the affairs of the continent.

Second Provincial Congress.—The Continental Congress had recommended the meeting of another Congress to assemble in May, 1775. In order to elect delegates to this second Congress, John Harvey, who had been empowered to call another meeting of the deputies, summoned them to meet at New Berne in the month of April, at which time and place the General Assembly was also to meet. The meeting of a revolutionary body at the same time and place with the legitimate legislative body, and the probability that many persons would be members of both bodies, gave Governor Martin much annoyance. Governor Martin followed Harvey's advertisement by a proclamation which he thought would counteract its effect, but he had again misjudged the temper of the people whom he governed.[1] As was expected, most of the deputies were also members of the Legislature. Both bodies met on the same day, and John Harvey was made not only Speaker of the Assembly, but also President of the Congress of Deputies. This was a strange state of affairs. The Provincial Congress might be in session when the Governor's secretary would be announced, and then, Proteus-like, the Congress would change itself into the Legislative Assembly and proceed to dispatch public business.

Governor Martin's embarrassment may well be imagined. His address to the Assembly was full of instructions regarding unlawful Assemblies, and especially did it call upon the Assembly to resist that illegal body then in session in that town, saying that it was wounding to their dignity and setting up representatives derogatory to their just power and authority. The address was long and tedious; it was the final effort of a well-meaning Governor, who deeply felt his allegiance to his King, and who was trying by pacific means

[1] Martin: 340.

to bring back the people to their proper allegiance as he conceived it. The House replied by declaring that they did not wish to interrupt the meeting of deputies then in session; that they approved the Continental Congress, and that the cause of Boston was the cause of all. The Governor saw how vain was his task, and dissolved the Assembly April 8, 1775, after a fruitless session of only four days.

The deputies now felt that they had become legislators, and that the internal welfare of the province rested in their hands. This body then took charge of the province, declared its policy, issued instructions for the guidance and conduct of county committees and re-elected the delegates to the Continental Congress. The deputies then adjourned, after having made arrangements for another meeting.

Governor Martin saw plainly that the tide was running against him, that pacific measures were no longer of any use, and that other means must be used. He collected a few old cannon that were scattered about the town, and placed them before the palace for the purpose of intimidating the people.[1] He also dispatched messengers to Cross Creek, where so many of the loyal Scotchmen lived. Other messengers were sent into the back counties to enlist the sympathy of those who had been engaged in the disturbance under Governor Tryon.

But vigilant eyes kept watch on every move of the Governor. Committee meetings were frequent in the counties and towns, while the militia turned out voluntarily to be trained, and furnished themselves with arms and ammunition. Governor Martin's course created much alarm. A letter from him to General Gage was intercepted. He wished a supply of arms, and expressed his opinion that many of the inhabitants had seen the error of their way. The town committee of New Berne still watched him closely, and at last interposed, seized and carried off from the palace six pieces of cannon, April, 1774.[2] Governor Martin, find-

[1] Martin: 352.

[2] Gov. Martin says he left before this; that on election day, the mob, stimulated with liquor, carried off 6 pieces and attempted to break into the house. C. R. Vol. X, 49.

ing himself so closely watched that he could accomplish nothing, and deeming himself insecure, forsook his palace and went to Fort Johnson, on the Cape Fear, in May, 1775. Fort Johnson was situated just below the town of Wilmington. When the inhabitants of the town learned of Governor Martin's presence in the fort they were apprehensive that he might use the fort to distress the town, or make it a center for the gathering of the disaffected.

So great did the excitement become that the people assembled under John Ashe for the purpose of removing the artillery, but when they went to the fort it was too late, for Governor Martin, who had already gone on board the cruiser, had secured the arms and put them on board the ship. Under John Ashe, the people entered the fort and fired it, July 19.[1] The fort had already been dismantled, for the commander reported that there were not more than two or three men in the garrison on whom he could rely.

From his floating palace Governor Martin issued proclamations, but they were unheeded, and their circulation interfered with. Watchful committees still guarded the coast against his emissaries, who tried to make their way into the back counties.[2] His friends on shore were not allowed to visit him without the consent of the nearest committee. Royal authority was now a mere shadow. Everywhere committees exercised controlling power. The second Continental Congress was soon to meet and put an end to the long and obstinate disputes.

On June 26 the Continental Congress took under consideration the affairs of the province of North Carolina, and

[1] Before attacking the Fort they sent an address to Governor Martin on board the cruiser preferring charges against Collet, commander of the fort, and declaring their intention of taking the fort, and keeping the cannon in good condition, till the King's service needed them. C. R. Vol. X, 103, 104, 188.

[2] It was rumored at one time that Governor Martin contemplated going into the back counties and among the Scotch and stirring up a civil war. Orders were issued by the committees for his arrest if he should attempt it. Rumors of intended insurrections instigated by Martin spread. C. R. X, pp. 124, 140.

advised the people to associate themselves for the protection of American liberty and to organize militia companies.

After the fight at Lexington, April 19, vague rumors filled the air of conflicts around Boston. The presence of Governor Martin in a man-of-war off the coast lent color to the suggestion of armed invasion and internal strife. Governor Martin saw his shadow of authority grow dim, and then in his wrath and fury he issued, August 8, his final proclamation, known as the "Fiery Proclamation," in which he surpassed himself in denouncing the people whom he could no longer govern.[1] The next Provincial Congress, August 20, replied to it by declaring it a scandalous, scurrilous, malicious, seditious libel, and ordered it to be burned by the common hangman.[2] Royal rule in North Carolina was at an end.

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[1] C. R. Vol. IX, p. 141. [2] C. R. Vol. X, pp. 141, 180.

THE PROVISIONAL GOVERNMENT.

After the flight of Governor Martin from the palace, in May, 1775, the people were impatient for the assembling of another Provincial Congress. Frequent petitions were sent up by the county committees to Samuel Johnston, asking him to call a meeting of the deputies.[1] The people had come to regard these Congresses as the province in action. Mr. Johnston had been requested by the last Congress to call another in case of the inability of venerable John Harvey to do so. Harvey having died, the duty fell upon Samuel Johnston. Johnston, however, was now in something of a dilemma. The Assembly was expected to meet in New Berne, July 12. Many members of the Assembly would probably be members of the new Congress. Since Johnston had power to call the Congress to meet at Hillsboro only, he postponed issuing the call till Governor Martin prorogued the Assembly till September 12.

Events were now following each other so rapidly that no sooner had one Congress adjourned than clamors arose for another. A county committee wanted to attack Fort Johnston, but feared that the Congress would not approve the act, and so they prayed Mr. Johnston to hasten his call, for they "hoped everything from an immediate session and feared all from its delay."[2] Other county committees were obtaining the subscriptions of persons who were ready to arm themselves against the English Government, and to submit to the control of committees. Rough means were sometimes used to secure the names on the list. Men were threatened with tar and feathers to induce them to submit to the au-

[1] C. R. Vol. X, pp. 66, 72, 74, 90. [2] C. R. Vol. X, p. 91.

thority of the committees. But the people were very much attached to the Crown. Loyalty to the reigning house was a virtue on which they prided themselves. To secure their adherence to the new government that was arising in the counties, the Crown was pictured as being at the "mercy of an evil-minded Parliament and a designing ministry." To counteract this influence Governor Martin issued a proclamation declaring Parliament and King to be in perfect harmony, and that the King had no idea of depriving any of the colonies of their charters.[1]

Governor Martin was aware of the restlessness that pervaded the province, and so he decided that it would be useless to call together the Assembly. Mr. Johnston, becoming acquainted with this fact, summoned the third Provincial Congress to meet at Hillsboro on Sunday, August 20, 1775.[2] There was wisdom in the selection of this place, it being situated in the very heart of the territory where the Regulators abounded. The former Congress had met at New Berne in the east, but this Congress was to meet in what was then considered the west. The preponderance of political power lay along the Atlantic seaboard. Such being the case, it was but natural for sectional jealousies to arise, but a meeting in Hillsboro was an excellent means of uniting the different sections of the province. The three representatives in the Continental Congress were taken from the east, but this convention, upon the resignation of Richard Caswell, selected as his successor John Penn, of Orange, a western county.

The condition of the province at this time was one of intense excitement. The delegates to the Continental Congress kept the committees informed of the state of affairs in Boston and in the other colonies, and continually urged the province not to lag behind. These delegates sent an address to the town and county committees, declaring to them that the "fate of Boston was the common fate of all," and that the other colonies were armed for defense. They urged

[1] C. R. Vol. X, pp. 17, 18, 19. [2] C. R. Vol. X, p. 88.

the committees to organize into a militia, to study the military art as the science upon which their future security depended.[1]

The news of the Battle of Lexington caused the formation of many associations in which men declared that they, feeling justified in the sight of God and man, would unite themselves into an association for the defense of their country, and would pledge their lives and fortunes to the Continental and Provincial Congresses. They also declared that Lord North's bill was "low, base and flagitious, a wicked attempt to enslave America," and that the ministry was profligate and abandoned.[2] The people throughout the province were thrilled with enthusiastic fervor.

The Congress met August 21, 1776. It was much larger than any previous meeting. In the summons which Johnston sent to each sheriff in the province he advised the selection of five delegates at least, but many counties sent more—even ten.[3] The first work of this body was the preparation of a test oath, which every one had to sign before taking part in the deliberations. This oath was declaratory of allegiance to the King of Great Britain, and an acknowledgment of the constitutional executive power of the government, but at the same time a denial of the right to tax without representation. The signers agreed to obey the Acts of the Continental and Provincial Congresses, for in them they

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[1] C. R. Vol. X, pp. 20-23. They advise to "preserve their ammunition as a sacred deposit, for he in part betrays his country who sports it away, perhaps in every charge he fires giving away the means of preserving a human life."

[2] In many places the local committees had usurped all power and begun preparations for war by purchasing and storing away powder and lead against sudden emergencies. These local committees were the hot-beds of the revolutionary movement. Their acts and resolutions were bold and vigorous. They had not learned to practice deception by voting flattering messages to the Crown.

[3] The total number of delegates assembled was one hundred and eighty four. Samuel Johnston was made president. C. R. Vol. X, 160 *et seq.*

declared they were fully represented. Every member present signed it. That every one was sincere can hardly be believed, but they had so often sworn allegiance to the King that it had become the proper formula to be used in all public meetings. No illegal or revolutionary body would think of proceeding to business without first swearing its deep devotion to and affection for the reigning house. Diplomacy requires all formal communications to be ceremonious and stately. At present, these men were fighting a diplomatic duel, and so were punctilious in their etiquette and self-restraint. This Congress regarded itself as possessed of plenipotentiary powers. Its acts were to bind the whole body of the people without consulting them. It recognized that important labors lay before it, for Royal Government in North Carolina had ceased.

To unite the various elements that constituted the people of the province was one great task. The inhabitants were of English, Scotch, French and German extraction, and many were settlers from other colonies. There were different political parties. Numbers of Scotch Highlanders had been pouring in, and as yet they had manifested no sympathy with the new movement. To secure the Scotch party would be a great gain. An enemy in the heart of the province was greatly to be dreaded. So the Congress appointed a committee, composed largely of Scotchmen, to visit these people and explain to them the character of the new movement, and what cause impelled them to take this course. But the work of the committee was in vain. The Scotch decided to remain neutral for the present. Many of them were Presbyterians, and ministers came down from Philadelphia to do missionary work among them on behalf of the American cause.[1]

Another important party was the Regulators. They had not chosen to cast their lot with the Congress. Some of them claimed to be bound by their recent oath of allegiance, while others remembered too well the fatal day at Alamance,

[1] C. R. Vol. X, p. 173; Jones' Defense, 231.

and still feared the power of the English Government. Many of them cherished little love for the men who had crushed their own protest against illegal oppression, and from whose wounds they were still smarting. A committee was appointed to consult with the Regulators, but argument and persuasion were in vain. Resolutions were passed guaranteeing them against any punishment with which they might be threatened, but they feared even gifts from the hand which once had smitten them.[1]

There was another disaffected class, composed of those who did not believe that the movement would amount to anything. The county committees arrested many of these and brought them prisoners to the Congress that it might determine their fate. Many recanted and took the test.[2]

The creation of a new government was the most important duty devolving upon the Congress. It declared that inasmuch as the Governor continued to absent himself from the province without sufficient cause, and refused to exercise his power by retiring on board a man-of-war without any threats or violence to compel him to such measures,[3] it

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[1] On the commtttee of argument and persuasion were Richard Caswell, who had commanded troops at Alamance; Maurice Moore, who had adjudged several of their number guilty of treason and condemned them to death; and Rev. Mr. Patillo, who had preached against their cause. To forget these things was too great a task. Many of the Regulators had left North Carolina and gone into the wilds beyond the mountains. Here they made their homes and followed their frontier leaders. Governor Martin thought that both the Regulators and the Scotch would remain neutral. C. R. Vol. X, p. 266. Bassett's Regulators in North Carolina.

[2] C. R. Vol. X, pp. 160, 182. Thanks were voted to the "Gentlemen Volunteers of Anson" who brought persons in their custody to the Congress.

[3] Gov. Martin wrote June 30th that the government of the King was impotent. "I daily see, indignantly, the sacred majesty of my royal master insulted," he said, "the rights of his crown denied and violated, his government set at naught and trampled upon, his servants of highest dignity reviled, traduced and abused, and the whole constitution unhinged and prostrate, and I live, alas, ingloriously only to deplore it." C. R. Vol. X, p. 47.

was necessary to create a civil government. To the Governor these words must have seemed ironical. These men did not desire to form a permanent government. There was still hope of reconciliation. But some kind of government was necessary, since for months each county committee had done that which was right in its own sight. There was danger of anarchy.

The form which the new government took was in great part determined by the existing condition. The most active forces in the province were the local committees in each county. They would not readily yield up their newly-won power. The question was how to steal away the power from these committees and place it in fewer and more conservative hands. It was useless to think of a sudden change, so it was decided to form a government consisting of committees, but with the local committees subordinated.[1] Two superior committees were established, a Provincial Council and six District Committees of Safety.

The Provincial Council was to consist of thirteen (13) members, two from each of the six districts in the province, and one from the province at large. The Congress was to elect them upon the recommendation of the deputies from each district. Its powers were specified in some particulars, but full executive and administrative power was given it. It might do nothing contrary to a resolution of the Congress. While the Congress was not in session it was to be the supreme power. The control of military affairs was placed in its hands.[2] It also controlled the public funds, but was

[1] On August 24th, 1776, the Congress appointed a committee of forty-six to prepare a plan of civil government for the regulation of internal peace and order, and for the safety of the province. The resolutions appointing the committee defined the subjects on which it was to report. The general plan was thus recommended by the Congress, while the details were arranged by the committee. Maclaine was chairman. C. R. Vol. X, pp. 175, 193.

[2] These were such as certifying to the appointment of officers, filling up vacancies, granting certificates of election, vetoing the selection of officers, suspending officers, ordering court-martials, calling out the militia, and enforcing the acts of the Congress. C. R. Vol. X, p. 209.

enjoined to keep strict account of all expenditures and present it to the Congress. It was to hold quarterly meetings, and oftener, if deemed necessary, and to choose its own place of meeting. The salaries of the members were to be ten shillings per day and ferriage. In case of vacancy, the Committee of Safety in the district where the vacancy occurred was to elect a proper person. No person holding a military position or a lucrative office under a commander was capable of acting as a member of this Council.[1]

The Six District Committees of Safety[2] were intimately connected with the Provincial Council. They consisted of a president and twelve members each, and were to sit every three months, and oftener, if deemed necessary, at the principal towns in their respective districts. It had been the custom in some parts of the province for several counties to hold a general meeting, so the creation of the district committee was only a continuation of what already prevailed. Under the control of the Provincial Council they were to direct the movements of the militia and such other forces as might be employed in their respective districts. They were to receive information and punish delinquents in the first instance, or to act as a superintending power over the town and county committees. Members of this committee were elected by the delegates from their respective districts in the Congress, but the election was sanctioned by the Congress.

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[1] The first Council was composed of Samuel Johnston, Cornelius Harnett, Samuel Ashe, Thomas Jones, Whitmill Hill, Abner Nash, James Coor, Thomas Person, John Kinchen, Willie Jones, Thomas Eaton, Samuel Spencer, and Waightsill Avery. Gov. Martin said that in the first Council were no less than seven lawyers, all of whom were infamous and contemptible, except Samuel Ashe and Samuel Johnston, and that among the others there were none of good character and some were contemptible to the last degree. The Council selected its own president at its first meeting. Cornelius Harnett was chosen. The Council might call a meeting of the Congress before the regular time for special reasons. Two members of this Council were necessary to the organization of the Congress. The Council endured only from Congress to Congress. C. R. Vol. X, pp. 212, 269.

[2] C. R. Vol. X, p. 208 *et seq.*

The members were not allowed to hold any position in the army or any lucrative office under any commander.[1]

Town and County Committees.—Edenton, New Berne and Wilmington were the most important towns in the province. The Congress ordered each of these towns to elect a committee consisting of fifteen persons, also every town possessing the right of representation in the Congress was to have a committee of seven. All persons having the right to vote for representatives might vote for a committeeman. The county committees were to consist of twenty-one members. These committees were to meet on the first day of their county courts, and as often and at such places as they pleased besides. Town and county committees might meet together.[2]

When the people of the counties met to choose these committees, great interest was taken in the elections. It was very necessary that there should be unanimity. In the old County of Bute (now Warren and Franklin), recourse was had to a primitive custom. Kinship was made the basis of the organization; one member was selected from each kin. In later years it was a current saying that "there were no Tories in Bute."[3] The Tryon committee was selected on the military basis, two from each company.[4] The committees had frequent meetings. They were typical of vigilant

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[1] The districts were Wilmington, Newbern, Edenton, Halifax, Hillsboro and Salisbury. The present Congress chose these committees at once. C. R. Vol. X, pp. 214, 215.

[2] These county committees had been first appointed at the request of the Provincial Congress of October, 1774. It was then recommended that five persons compose the committee, but so enthusiastic were the citizens or so anxious were they to be members of it that much larger numbers were appointed. In some counties there were a hundred members. This was designed to enlist the active sympathy of a large body of citizens. Patronage was used and won adherents. C. R. Vol. X, p. 37.

[3] Jones' Defense, 203.

[4] These committees were to elect a Committee of Observation and Secrecy, consisting of seven members, who might arrest suspects and hold them for trial.

committees, had little regard for courts of law, and administered justice in such rough and ready manner as suited them best. They executed the orders of the Provincial Council, it is true, but more often they acted on their own responsibility. Suspected persons were arrested and examined; many lawless acts were committed by them; the outrages of internecine war were encouraged, and tar and feathers often characterized their work. The Provincial Congress had forbidden them the infliction of corporal punishment, but they acted as if they were a law unto themselves. There is no doubt but that they helped the wavering Whig or reluctant Tory to the formation of his political creed, and in the civil war that was soon to break out they took an active part. Yet these petty Parliaments conducted their deliberations with dignity and decorum, and adopted a system of Parliamentary procedure.[1]

Suffrage.—Suffrage under the Royal Government had been granted to the inhabitants, but now it was restricted to freeholders except for persons residing on certain lands[2] of Lord Granville, where a "householder" with improved land in possession was given the privilege. The result of this enactment was the disfranchisement of many Scotchmen whose loyalty to the King was still unshaken. This gave the Whig party control of the machinery of government in those counties where the Scotch were in the majority. Though this was at the time probably the object of the limitation, yet it must be borne in mind that the extension of the suffrage was no part of democracy as then understood. Governor Dobbs's administration in 1760 was criticised because it favored the extension of the electoral franchise. Royalty was thus more favorable to universal suffrage than was the new government.

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[1] C. R. Vol. X, pp. 186, 191-204.

[2] These lands were the counties of Bute, Wake, Granville, Chatham, Orange, Guilford, Rowan, Surrey and part of Mecklenburg. Jones' Defense, 202.

Military Organization of the Province.—After recounting the dangerous and critical condition to which they had been reduced by the British ministry, and the threatening attitude of Governor Martin, the Congress determined to put the colony in a state of defense "for the sole and express purpose of security." Meditated resistance required military preparations. It was thought at least that an armed peace was safest. So on September 1, 1775, Congress voted to raise at once two regiments, consisting of 1000 men each, for the Continental establishment. Washington was already at Cambridge drilling the raw recruits from the American woods. Colonels Howe and Moore were placed in command of these two Continental battalions. The next spring four more battalions were added.

Minute Men.—The six judicial districts of the province were also made military districts. A battalion, consisting of ten companies, fifty men each, was to be raised in each district. These were the minute men of the province. The first officer in each district was to appoint persons in each county to enlist them, and when the companies were organized they were to select their own captain, lieutenant and ensigns, and they were to appoint the non-commissioned officers. To be accepted, these companies had to appear before the county committees.[1]

Militia.—It was determined to organize the militia of the province in every county. The field-officers were to be appointed by the Congress, and the captains, lieutenants and ensigns by the county committees, but the commissions for the latter were to issue from the Provincial Council. This bestowal of the veto power of the Council was for the purpose of thwarting the designs of those counties where the Tory element was in the ascendency. In certain counties, where it predominated, the officers elected might be Tories. These companies were to meet once a month for muster.

[1] A bounty of twenty-five shillings was allowed to every private and non-commissioned officer to buy him a uniform, consisting of a "hunting-shirt, leggins, or splatter-dashes, and black garters."

They were intended to be under the control of the District Committee of Safety.

Volunteer Companies.[1]—In addition to the regularly constituted military forces of the province, there were voluntary companies throughout the province, which were subject to the county committees. Thus, in September, 1775, the province was thoroughly organized. Military officers were appointed and thorough discipline instituted.[2]

Revenue.—In order to defray the expenses of this military establishment, it was ordered that there be issued, on the faith of the province, a sum not exceeding £125,000. For the redemption of these bills a poll-tax of three shillings was appointed to commence in 1777, and continue for nine years.[3]

Encouragement of Manufactures.[4]—This Hillsboro Congress knew that open hostilities would interfere with foreign commerce. The province at this time ranked fourth in the confederation.[5] The closing of the ports by the more powerful English navy would bring misery upon many; there would be no market for products; there would be suffering

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[1] Jones, 340; C. R. Vol. X, p. 215.

[2] Each inhabitant of the province was advised to get a "bayonet for his gun and be ready to turn out at a moment's notice." C. R. Vol. X, 215.

[3] For counterfeiting, the usual heavy penalties were attached—death as a felon without benefit of clergy. Whoever should refuse to take these bills was to be regarded as an enemy to his country. To speak disrespectfully of them was to declare one's self an enemy of the cause. Strict guarantees were made to secure the circulation of this currency. Efforts were made to procure arms from other provinces and also to bring all private arms into the public service. Captains were ordered to borrow guns, giving certificates describing them and their value, that the owners might afterward receive pay for them. Many guns were rented per annum. There were willing hands on every side. Warlike preparations were to be seen from the coast to the mountains. The Provincial Council now was rarely called upon to settle civil suits, but frequently granted commissions and instruments of war. C. R. Vol. X, pp. 193-195.

[4] C. R. Vol. X, 216-219. Pref. Notes IV.

[5] C. R. Vol. X, p. 271.

for the want of the daily necessities of life. In this way the province might be subdued, for bitter suffering would accompany the taste of freedom. To guard against this danger Congress offered bounties for the production of saltpetre, gunpowder, nails, salt, sulphur, iron and other manufactured products.[1] Throughout the province were seen efforts to make it self-supporting and independent of the outside world. Even before the Congress adjourned application was made for the bounty on linen.[2]

Franklin's plan of confederation was discussed at this Congress. Hooper had come down from Philadelphia, and felt that all hope of honorable reconciliation was impossible, and that the only thing to be done was to maintain a united resistance to the last. The Continental Congress had not recommended the plan, but only desired an expression of the opinion of the delegates. After studying and discussing the proposed plan, the Congress decided that it was not suitable for present purposes, and expressed their willingness to rely on the association recommended by the Continental Congress. Not only was the Franklin plan refused, but the Continental delegates were instructed to vote for no plan of confederation before consulting the Provincial Congress. The Congress declared its willingness to pay a proportional part in the support of a Continental army. To aid in this, local committees were ordered to make a census of the inhabitants in their respective districts.[3]

A loyal address directed to the inhabitants of Great Britain was prepared. The colonists were aware of the sympathy of London with the Americans, and had read the peti-

[1] For every One Hundred-weight Saltpetre, .25; for every Five Hundred-weight Gunpowder, $2.00; for first Rolling and Slitting Mill for preparation of Iron for Nail-making, $2.50; for first pair Cotton Cards, .50; for first pair Woollen Cards, .50; for first 25 doz. Pins, .50; for first 25,000 Needles, .50; for first Steel Furnace, $1.00; for first Paper Mill, $2.50; for first 25 yds. Best Linen, .50; first Best Woollen Cloth, $1.00; Salt works on Seashore, $7.50; first Furnace for Pig iron and Hollow iron, $5.00.

[2] C. R. Vol. X, p. 271. [3] C. R. Vol. X, pp. 176, 192.

tion declaring abhorrence at the measures pursued against them.[1] The address written by William Hooper was adopted, and received an extensive circulation; it disavowed any desire for independence or separation, and declared the devotion of the province to the House of Hanover. It even consented to the injurious regulations of trade, and asked only to be restored to the condition prior to 1763. The address was prepared under the watchful eye of a committee, and the wording was so careful that even a Highlander might sign it and still remain faithful to his King. It showed that the colonists, though in the midst of preparing for armed resistance, and daily committing treasonable acts that drove Governor Martin into an hysterical frenzy, were yet willing and anxious for peaceful settlement. The address was made not to King, Ministry or Parliament, but to the people of the British Empire, and shows the strong feeling of brotherhood with which the colonists were imbued. It was the voice of friend and fellow-citizen speaking to friend and fellow-citizen, and it declared that the happiness of the whole British Empire was the purpose of this contention. But the battle for the salvation of the rights of Englishmen was to be fought on American soil.[2]

The new government went into operation at once. There was no friction, for it was simply the adaptation of what already existed. The principles of the new government had been growing in the province for a year previously. The new Council held its first meeting October 8.[3] Cornelius Harnett, whom Josiah Quincy called the Samuel Adams of North Carolina, was elected to the perilous position of president. Harnett was now virtually Governor of North Carolina. He was no temporizer, and at once began to prepare the province for war. The Council issued one address after another. Close watch was kept on Governor Martin in his "floating palace" on the Cape Fear. The apprehension of

[1] C. R. Vol. X, p. 59.
[2] C. R. Vol. X, Proc. 2nd Provincial Congress.
[3] C. R. Vol. X, Proc. Provincial Council.

the disaffected and their imprisonment busied the Council. It was the executive of the acts of the last Congress, and of its own determinations. It appointed commissioners to confer with like commissioners from Virginia and South Carolina for united resistance, and decided to disarm all suspected persons, ordering the county committees to perform this task. Here was an occasion for the display of personal daring and chivalry, but it arrayed neighbor against neighbor.[1]

Uprising of the Scotch Royalists.[2]—The region of the Cape Fear from its mouth, below Wilmington, to its headwaters in the back counties, was largely inhabited by Scotchmen.[3] The majority of these Scotchmen possessed little property. Many of them were merchants, and erected their neighborhood stores far in the interior. Among them, however, were some persons of prominence and wealth. These people had been treated very kindly in North Carolina, but Governor Martin had been their special friend. Many had come to these wilds as to an asylum of rest. They had opposed the English Government and suffered for it at Culloden; they now preferred to spend their days in peace. But no sooner had they become settled in their new abodes than the trouble began to brood between their neighbors and the government of Great Britain. Here an opportunity was offered for them to show their devotion to the House of Hanover, as they had once before shown it to the ill-fated Stuart. They had too recently felt the hand of British power to hasten into opposition against it in this country. They knew little of the grievances under which the colonies labored.

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[1] The Council held its first meeting at Johnston Court House Oct. 18-22; the second meeting at the same place Dec. 18-24; and the third meeting at Newbern Feb. 28-March 5, 1776, where it summoned a meeting of the Provincial Congress at Halifax, April, 1776.

[2] C. R. pp. 444, 452, 465.

[3] Here lived the famous Flora McDonald whose heroic spirit had been shown in her devotion to the Stuart Pretender.

The emissaries of Governor Martin had been among them and filled their minds with horror of a "most unnatural rebellion." Governor Martin confidently depended upon their loyalty. He wrote letters to the ministry declaring the devotion of these people and the Regulators, and promising that the province, when threatened seriously, would largely remain faithful to the English. He believed that so many had been coerced into the new Whig party in the province that the whole movement would fall at the first appearance of danger. These letters induced the ministry early in the year 1776 to plan a grand invasion of North Carolina from different quarters. Lord Dunmore was to threaten the province on the Virginia side. In the Cape Fear region was Governor Martin, who was to be joined by Cornwallis, Clinton and Campbell. The attack was to be completed by the march of the loyalist army of Scotch Tories and Regulators from the back counties to join the other troops.[1] The object of the invasion was to separate the southern colonies from the others, and the Scotch loyalists were to be the wedge that should rend them asunder. Governor Martin declared that in this way the rebellion would soon die in the South. With a hostile foe on the north, with British troops and fleet on the east, with Indians on the west, and Tories in the heart of the province, the new government was to be put to the test of its powers early in 1776.

In January, 1776, Governor Martin issued commissions to certain Scotchmen and others to organize this class and march down the river to Wilmington by February 15.[2] A meeting of these newly-commissioned officers was held at Cross Creek, now Fayetteville, on February 5.[3] The trustworthy Scots opposed the uprising at that moment. They deemed it wise to wait till the British fleet appeared. Other council, however, prevailed.[4] Collecting the Highlanders

[1] C. R. Vol. X, p. 46, Martin's Plan proposed to Ministry Jan. 3rd, 1775.

[2] C. R. Vol. X, pp. 441-444.

[3] Among the Highlanders were men on half pay in the British Army.

[4] Bancroft, IV, p. 387.

and a remnant of the Regulators, the aged Donald MacDonald, who had fought on the field of Culloden, began his march down to the sea on February 18. But men were ready to meet him, and they informed him that they had determined to hazard everything in defense of the rights of mankind.

There were minute men, militia and volunteer rangers, all watching his course, and all determined that he should not form a junction with the British fleet then expected at the mouth of the Cape Fear. As the two armies drew nearer together, MacDonald saw the imminent danger with which he was threatened, of being cut off from Wilmington. He told the troops that if there were any so faint-hearted as not to serve with the resolution of conquering or dying, they might then declare themselves. The Scots answered with a huzza for the King, but some twenty others laid down their arms and returned home.

On the morning of February 27, 1776, MacDonald's troops came to Moore's Creek, within twenty miles of Wilmington. The campaign had extended along the Cape Fear for fifty miles, and there had been no serious encounter. But the Carolinians now had them in a place where fighting was necessary. They took their stand on the opposite side of the creek, after having removed everything from the bridge except two logs, which served as sleepers. The Scots rushed forward, but the leaders, McLeod and Campbell, both fell, and in a few moments the assailants fled in irretrievable disaster. The victory was complete, the Tories dispirited, and many of them captured. Governor Martin's great dependency for subduing the province had vanished. On April 18 the fleet under Sir Peter Parker appeared, but it was too late. The plans of the invasion had been completely frustrated. The British fleet came and remained at the mouth of the Cape Fear till June 1, 1776. General Clinton, who was in command of the troops, did not think it

wise to invade the province.[1] Clinton's headquarters were so closely watched that the land forces did not land except to ravage Gen. Robert Howe's plantation.[2] The fear of the armed men who lined the coast, and distrust of Governor Martin's ability to conduct a campaign in the interior, caused General Clinton to sail to Charleston, and the danger of an invasion passed away.[3]

The effect of the battle of Moore's Creek was to dispirit the Tories and encourage the Whigs. What Lexington was to New England, Moore's Creek was to North Carolina. Almost every man was now ready to turn out at a moment's warning. The people had crushed domestic insurrection and repelled a threatened invasion. Too much stress has not been laid on the effects of the battle at Moore's Creek. Had the Whigs been defeated at this time, the plans of the ministry would have succeeded and the colonists would have been separated.[4] The victorious Whigs now felt the enthusiasm consequent on victory; blood had now been spilt, and there was no turning back. The bitterness between the two parties in the province was now intense, and many lawless acts were committed in the name of American liberty, but the Tory power was so broken that it never dared to raise its head again except when a British army was near.[5]

The Fourth Provincial Congress met at Halifax April 4,

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[1] He had been on board the man-of-war with Governor Martin long enough to know the spirit of the people and to learn how well the Provincial Council had prepared the province for war.

[2] On May 12th nine hundred troops landed, ravaged the estate, and advanced to Ostin's Mill to secure certain military stores, but the stores had already been moved to a place of safety. The buildings were fired and the two generals returned triumphantly to the fleet, having captured "three horses and two cows." Jones, p. 261; Martin, II, 390, 391.

[3] The whole royal force under Sir Peter Parker comprised thirty-six vessels.

[4] Bassett's Regulators in North Carolina.

[5] "As they marched in triumph through their piney groves they were persuaded that in their own forests they could win an easy victory over British Regulars." Bancroft, IV, p. 390.

1776. The men who attended were "all up for independence."[1] Four days after the opening of the session a special committee was appointed to take into consideration the usurpations and violence of the King of Great Britain.[2] That uncompromising Whig, Cornelius Harnett, was made chairman.[3] On April 12 Harnett's committee made their report. The report, after reciting the abuses of the government and declaring that the moderation of the united colonies and their sincere desire to be reconciled on constitutional principles had brought no mitigation, and that as there was no longer any hope in these means, recommended to the Congress to empower their delegates in the Continental Congress to concur with delegates from the other colonies in declaring independence and forming foreign alliances.[4] Congress adopted the report unanimously. This was the first vote in America giving explicit sanction to independence.[5] Some of the colonies were loathe to separate from the English Government for fear of losing satisfactory internal governments. This was not the case in this colony. The distractions of internal administration had so alienated its affections that it was not loathe to part with the system. But the colonists were jealous of weaving their internal governments with those of the other colonies. This province specifically reserved to itself the power of making its own laws and establishing its own form of government.

Having taken this bold and progressive step, having now

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[1] Johnston to Iredell, Iredell, I.

[2] This Committee consisted of Harnett, Allan Jones, Burke, Nash, Kinchen, Person and Th. Jones.

[3] He and Howe were the only persons excepted in the general pardon offered in Governor Martin's proclamation.

[4] Samuel Johnston wrote Jas. Iredell in April 13, that in consequence of some important news received the night before, the Congress had impowered their delegates to take the above steps. This may have been some movement of Gen. Clinton's or news from the fleet on its way to the Carolinas. The delegates to the Continental Congress wrote as if they had despaired of reconciliation. C. R. Vol. X, 1032.

[5] Bancroft, IV, p. 390.

severed all connection with the British Government, the Congress proceeded to consider the formation of a permanent form of government. On April 13 a committee was appointed to prepare a "temporary Civil Constitution."[1] How to put into operation the new machinery that had come into their hands was more difficult than to obtain it. These men knew the principles on which the English Government was founded; they were well grounded in fundamentals, but there was a marked lack of unity in administrative ideas. It had been very easy to declaim about self-government and the rights of Englishmen, but when it came to the preparation of measures for their security, there was an evident lack of confidence. Their ideas were not yet crystallized. Many projects were proposed, day after day the matter was discussed and postponed.[2] At this time there were no State Constitutions to furnish them with models.[3] There were provisional governments, but the Continental Congress had not yet advised the creation of State governments.[4]

On April 25 the committee reported the mere outlines of a form of government. This plan was that there should be an executive council, consisting of a president and six councillors, to be always sitting; a legislative council, composed of one member from each county, to be an upper house, and a house of representatives chosen from the people.[5]

[1] The members were: Samuel Johnston, Nash, Harnett, Th. Jones, Green, Hill, Burke, Allan Jones, Locke, Blount, Rand, John Johnston, Ashe, Kinchen, Spencer, Haywood, Richardson, Bradford, Ramsay, and Th. Person.

[2] C. R. Vol. X, p. 1037.

[3] South Carolina had adopted a constitution, but it was of little service to them. Connecticut had renewed her old charter of 1662, and some delegates favored using this as a model.

[4] This measure was not passed until May 10th, 1776. North Carolina had not waited for these instructions, as Bancroft and von Holst seem to think. (Bancroft: Vol. II, p. 344; von Holst: Vol. I.)

[5] For the legislative councilmen none but freeholders might vote; for members of the house only householders of one year standing. Our information on this plan is found only in letters, since no record was kept of the discussion. (C. R. Vol. X, 1034.)

The discussion of this plan produced the first schism in the ranks of the new party; it marked out party lines which were to prevail in later years. There had been harmony and unity, but there now came into being two parties, radicals and conservatives. The conservative party wished to put a check on the representatives of the people to prevent them from assuming more power than was consistent with the liberties of the people, but the radical party maintained that annual elections were a sufficient guarantee. Samuel Johnston strongly opposed the new plan, which he thought very bad. The difference of opinion between members became sharp and bitter. They had not met for the purpose of framing a Constitution, and they neither knew what the people desired nor what was best for them to have. But affairs suddenly took a change. The Congress, after a discussion of some days, postponed the consideration of the plan to April 29, on which day the committee was discharged and a new one appointed to form a temporary government to subsist until the close of the next Provincial Congress.[1] There were several reasons why the matter should have been postponed. In the Cape Fear river were 2000 troops, and 5000 more were expected.[2] It was not a suitable time to institute a new policy. Besides, many of the most influential members opposed the plan, and it was not well at this moment to lose their aid. Whatever the cause of the postponement may have been, a wise conservatism prevailed, and common sense triumphed over the tyranny of the majority.

This new temporary government which was created consisted of committees, but the Provincial Council and the six District Committees of Safety were abolished, and in their stead was substituted a Council of Safety for the entire State. The county committees remained as formerly. This system was superior to the old. The Provincial Council had met

[1] This new committee was composed of Burke, Howe, Ashe, Caswell, Hooper, Person, Nash, Kinchen, Th. Jones, and Coor.

[2] C. R. Vol. X, p. 1038.

only at intervals, generally every two months, but the Council of Safety was made a permanent body continuously in session. The change was one of administration only. The experience of the last few months and the present condition of the province recommended these changes. A permanent body is more influential than an occasional body, and is better qualified for the management of military affairs.

The District Committees of Safety, if judged by existing evidence, had not been active organizations. The local committees were so active that there was little left for the district committees to do. Complaint was made that they were not attending to any business, and the Provincial Council ordered them to meet and transact the public business. It was more convenient and more satisfactory for the county committee to confer directly with the central committee. Such being the case, there was no need for district committees.[1]

The Council of Safety had no fixed place of meeting; it went from one part of the State to another.[2] From the establishment of this permanent council the county committees declined in importance. The determinations of the Council were generally executed by some one delegated by it; it became the supreme power in the State, and almost the

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[1] It has been maintained that this change was simply a piece of partisan politics to get rid of Samuel Johnston, a member of the Provincial Council, who had made himself very offensive to the extreme radicals. Mr. Johnston was not elected a member of the new Council, but he did not complain. This same Congress had elected him president against his will, and at its close had voted him thanks as having proved himself a true and firm patron of liberty, a wise and zealous friend and assertor of the rights of mankind. C. R. Vol. X, p. 590. The members of the Council of Safety were Cornelius Harnett, Willie Jones, James Coor, John Simpson, Th. Jones, Hill, Eaton, Williams, Samuel Ashe, Person, Rand, Alexander and Sharpe.

[2] The sessions were held as follows: First, Wilmington, June 5–June 15, 1776. Second, Wm. Whitfield's, in Dobbs Co., June 19–July 16. Third, Halifax, July 21–Aug. 13. Fourth, Joel Lane's, in Wake Co., Aug. 21–Aug. 28. Fifth, Salisbury, Sept. 5–Sept. 12. Sixth, Halifax, Sept. 27–Oct. 25.

only power. Centralization prevailed over localism, and the usurped authority of the county committees was destroyed. This Council made its influence felt in the smallest details of administration. Cornelius Harnett was made president,[1] and his activity may be seen in the excellent military equipment of the State. The determinations of this Council were generally just, as justice went in that day, but to those local leaders or commanders of troops, called upon to execute these decrees, the triumph of the American cause and not justice was the guiding principle. The chief work of the Council was to secure the sinews of war. To do this, it established a political censorship and centralized power. This could not have been done in the previous year. The Provisional Government had served its purpose, and the dangerous power of the county committees had given way to it.

Efficiency of the Provisional Government.—Though in existence little more than a year, this government had shown its efficiency by conducting the province in safety through its peril. It was essentially a government for war, and its acts pertained in great part to war. It sent troops to aid Virginia,[2] suppressed the dangerous uprising of the Scotch, aided South Carolina against the Scovilite Tories[3] and repelled the attack of the Indians on the West. In administration the work of the committees was the same. There was no authority too high for a county committee to usurp, nor any detail too small for the central committee to consider.[4]

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[1] Cornelius Harnett was practically Governor of North Carolina during this entire period. Willie Jones was a member for the province at large and not president, as Wheeler says: Vol. II, p. 188. He presided at the last meeting at Halifax.

[2] Col. Howe with the 2nd Continental, and a militia battalion went to Norfolk, and so valuable was their aid that the Virginia Convention gave them a vote of thanks.

[3] Cols. Rutherford, Polk and Martin embodied the militia of the western counties and went to South Carolina and aided in prostrating the Tory party in that State. Troops were also sent to Charleston.

[4] The Rowan County committee was largely a law court, while the eastern committees dealt mostly with affairs of war. The Wilming-

Neither the Provincial Council nor the Council of Safety had any fixed abode or defined powers. If anything was to be done they did it or appointed some one to do it. They voted according to districts, the territory and not the people of the State being the basis of representation. Even the Congress voted by counties. In some counties the Tory element predominated, and in such places the county committees were helpless or worse, as they might even contain a majority of Tories. In cases of this kind some partisan leader, such as Ebenezer Folsome,[1] with his band of soldiers would carry out the orders of the Council. These leaders would sweep across the country with retinues of soldiers and inflict summary punishment wherever the good of the cause demanded it.

The Provincial Government strove to equip North Carolina for the impending conflict. The province seems to have become one vast military school. It appointed committees to confer with the neighboring colonies for better defense, fitted out armed vessels for the protection of trade, equipped trading vessels to secure arms and ammunition, ordered the purchase of the best literature that it might be disseminated to offset Governor Martin's proclamations, commanded public highways to be put in good condition, and other muniments of war. It permitted provisions to be sent to Governor Martin so long as he made no hostile attack on the province. Millers were ordered to grind for foe as well as friend. The Council declared against wanton cruelty, and sought to assuage the bitterness of internal strife, but temporary governments are liable to great abuses. Only outside danger and the oneness of purpose of the leaders saved the Provisional Governments in America from this charge.

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ton Committee was the most active and was in almost daily session in times of imminent danger.

[1] Folsome lived among the Scotchmen and was the most prominent of these partisan leaders. Finally he grew so independent that he was summoned before the Council for usurpation of power.

They were the means of transforming royal provinces into independent States. Their work they did well, and their moderation won many friends for the American cause, but there was always a feeling of uneasiness, and it was not long before North Carolina was engaged in the creation of a government which was to be permanent.

III.

FORMATION OF THE FIRST STATE GOVERNMENT.

It was generally understood when the Congress adjourned in May that there would be a new Congress in the following November. During the summer of 1776 the news came that the Continental Congress had passed the acts declaratory of independence from the government of Great Britain. Its influence on the province was only to close completely the door of reconciliation. The government already in existence was independent of Great Britain. The declaration was read in every county in the State, even at Cross Creek, the home of the disaffected Scotchmen.[1] The reading of the document was accompanied with great enthusiasm.[2] On August 9, 1776, the State Council of Safety issued a call for the Constitutional Convention,[3] in which the people

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[1] There was some delay in reading at Cross Creek in Cumberland County, there being no committee, but Ebenezer Folsome and David Smith were ordered to have it read. C. R. Vol. X, p. 695.

[2] At Halifax, Harnett himself read it to an enthusiastic multitude assembled from the adjacent country.

[3] This resolution has been regarded as the outcome of political partisanship, and the insistence on the exercise of great care in the selection of delegates as designed to secure the defeat of Samuel Johnston, the Conservative leader of the last Congress. It does not appear that the Council by this recommendation transgressed its bounds. The making of the Constitution was the most important question before the people of the State at this time. Its destiny was largely determined by this convention. The Council gave as their reason the adoption of the Declaration of Independence by the Continental Congress.

were recommended to exercise the greatest care in the election of delegates, since they were not only to make laws, but to form a Constitution, the corner-stone of all law on which depended the welfare or misery of the State.[1]

The political cleavage which appeared when the Constitution was first proposed at the previous Congress became wider now. There was no immediate danger from an outside foe; nor was there any pressing exigency such as makes a State feel the need of all its best men, consequently, the campaign that followed upon this call showed all the bitterness of a modern political campaign. Some of the conservatives in the former Congress had expressed their contempt for the new[2] form of government in language that irritated the radicals. There were disturbances at the polls and frauds in election, while rioting and debauchery prevailed in some counties. Though the leader of the conservative forces, Samuel Johnston, was defeated, many of his political friends were returned, some even from his own county. The conservative party favored a representative republicanism, while the radicals championed democracy.

The Convention, or Congress, assembled at Halifax, November 12, 1776. On the next day a committee[3] was appointed to lay before the House a Bill of Rights and form of

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[1] The convention was called for the special purpose of making a constitution, but it was not different from the former congress.

[2] Samuel Johnston said he had no confidence in it and declared that he would take no part in the execution of it, that numbers had now started on the race for popularity and were condescending to the usual means. A strong and determined effort was made to defeat him, and was successful. He had been the leader since the death of John Harvey, but for once his people were prevailed upon to desert him. Johnston's political opponents rejoiced greatly over their victory, and concluded by burning him in effigy. C. R. Vol. X, p. 1032. Iredell's Letters, Vol. I, 334, *et seq.*

[3] On the committee were Caswell, General Person, General Jones, General Ashe, Nash, W. Jones, Th. Jones, Neal, Samuel Ashe, Haywood, General Ruthford, Hogan, Alexander, Abbot, Luke Sumner, Th. Respis, Maclaine, Hewes, Harnett, Sharpe, Spicer, Hill, Coor, Harvey, Birdsong, and Irwin, C. R. Vol. X, p. 918.

Constitution. The general features of the form of government must have been understood, since the heated discussions of the former Congress were educational. The first question that came before the House was the method of voting.[1] The first Provincial Congress had adopted the method of voting by counties. There was a very good reason for it at that time. It helped to keep down Tory influence, while at the same time it permitted large delegations to represent each county. So many wished to be delegates that the Congress resolved to let each county decide for itself how many should be elected. The counties paid the salaries of their own representatives. The purpose for which the method had been introduced had now been carried out, so it was decided to abolish the cumbrous system and adopt individual voting in its stead.

The report of the Committee on the Constitution presented a Bill of Rights and proposed a form of government.[2] The former Congress in discussing a Constitution had made no mention of a Bill of Rights, but some of the delegates to this convention had been instructed to secure the introduction of one into the Constitution.[3] Not only were they so instructed, but they were presented with the declarations to be embodied in it. These declarations, however, were not adopted, though others were. The American Bills of Rights are solemn declarations of abstract principles relating to the origin and purpose of government. They are digests from the experience of the free people of England and America in their struggle for constitutional liberty. The American Constitution makers, though the

[1] C. R. Vol. X, p. 1017.

[2] On Dec. 6th, Th. Jones for the committee reported the form of government and on Dec. 12th the Bill of Rights. Both were read paragraph by paragraph and discussed, but no record was made of the discussion. The Bill of Rights was adopted Dec. 12th, 1776, and the form of government Dec. 18, 1776.

[3] Mecklenburg and Orange counties instructed their delegates and formulated the principles they wished embodied. (C. R. Vol. X, pp. 870a–890b.)

making of Constitutions was still in its infancy, were well-grounded in these principles; they held aloft the principles of English liberty. The English Bill of Rights is the natural outgrowth of Magna Charta. It furnished the model on which the Americans builded. Some of its clauses were adopted verbatim. Into the American Bills were inserted doctrines that could not well be inserted elsewhere, yet were matters of such high importance and wide application that they could not be omitted. There is no logical sequence in them, no scientific arrangement, though drawn generally by lawyers. The North Carolina Bill of Rights consisted of twenty-five paragraphs, containing, for the most part, the general fundamental principles upon which free governments rest. While these principles take root deep back in English history, yet the form in which they appear in this bill is more modern. It was composed in part by taking sections of the various Constitutions[1] which were before the Congress and combining them. It can lay claim to originality neither in conception nor expression. What suited their purpose best, that they took.[2] The men were too busy to

[1] William Hooper sent from Philadelphia the plans of government of several provinces. It is probable that he sent that of Delaware, New Jersey, Pennsylvania and Rhode Island. C. R. Vol. X, pp. 870, 862, 868.

The Connecticut plan was before them, as was also that of South Carolina. Maryland had already adopted its Constitution. Caswell, the president, was a native of Maryland, and so it is probable a copy of the Maryland Constitution was before them.

[2] Sections II, IV, XXIV, XX, VII and XII are found verbatim in the Maryland bill. There are nine other sections differing only in a word here and there, viz., sections I, II, X, XI, XVIII, XV, III, XXII.

Sections XIX, II, XIV, XVII, XXI, XIX may be found in the Pennsylvania bill.

Sections V, IX, XI, XVII, are in the Virginia bill.

These states formed their Constitutions before the meeting of the Constitutional Convention, or Congress. (Poole: Constitutions and Charters.) The Maryland bill contributed more than any other. The course that Maryland took was closely observed by the province of North Carolina. (Letters of Iredell: C. R. Vol. X, 1038.)

hesitate to copy verbatim what served their ends. They were men of action rather than of the closet.

The State Constitutions are the oldest creation in the political history of American States. The colonists brought with them charters which molded their local institutions. The State governments were based upon the principles of these early charters. The governments of this period also reveal to us the meaning of democracy as understood at that time. Democracy is a growth, and what is democratic in one age may appear aristocratic in another. In the history of the development of democracy many contests have been waged. The constitutional purpose of the struggle in 1776 was the curtailment of executive power. The contest was between the legislative and the executive. Democracy meant opposition to royal prerogative. To limit the power of the executive and to increase that of the legislative was the most significant intent of the Constitution makers of this convention. In this light only did democracy triumph, for the executive was made dependent upon the Legislature. The Constitution contains provisions relating to the general policy of the State, as well as to its political organization. In this respect the Constitution has grown, for as questions of State policy have become settled they have gradually been embodied in the Constitution. The form of government as adopted was the outgrowth of what had been proposed at the last Congress, though much amended and amplified.

There were still the party differences that appeared at the first proposition of a Constitution, but after several weeks of the session had passed a form of government was agreed upon which was as follows:[1]

The Executive Power was vested in a Governor, who was to be elected jointly by both Houses of the General Assembly on the first meeting after each annual election. He was eligible three years out of six, was required to be thirty years of age and to have resided in the State five years previous to

[1] Poole's Constitutions and Charters.

his election. The requirement, possession of a free-hold and tenements above the value of £1000, showed that the influence of the landed aristocracy predominated in politics. The powers of the office as far as they went were those usually found accompanying a chief executive. He was commander-in-chief of the militia, and might call them out in times of peace with the consent of the Council of State. But even this power or executive prerogative was not respected by the Legislature, which regarded the executive as a puppet whose power was to be curtailed or increased as suited the legislative fancy. In September, 1780, the Legislature decided to create a Board of War and to give it the power over the military, which the Constitution had given to the Governor as commander-in-chief. The Governor was made the mere executive of the decisions of this Board.[1] Governor Nash resented this interference with his constitutonal privileges, and a controversy ensued which caused Nash to resign. Though the creation of the Board was manifestly unconstitutional, yet the Governor could only submit, since he had no veto, and it was not yet a principle that the judiciary could declare void an act of the Legislature. By the creation of this Board was destroyed that unity so essential in times of danger. The Board itself was soon found inefficient and inconvenient, and was abolished January, 1781.[2] Upon his resignation, Nash was succeeded by Burke, who was taken prisoner in the late summer. Martin succeeded him, and changed the policy of the State. Within one year the State had three different policies. Not content with the former degradation of the Governor, the Assembly asked General Smallwood, of the Maryland Line, to take command of the

[1] Iredell: Letters, Vol. I, p. 458.; Sparks' Biographies, Davie: XXV, p. 53 *et seq.*

[2] The members of the board were Alex. Martin, John Penn, and Oroondates Davis. Not being men of any military experience of importance, they provoked only disrespect. Wm. R. Davis said that Martin was indeed a warrior of surpassing fame, Penn was only fit to amuse children, that Davis "knew only the game of whist."

militia. He exercised this authority during the trying experiences of 1781. (Iredell's Letters, Vol. I, 458).

When Cornwallis decided to make his second invasion into North Carolina from the South, and so divide the confederation, there was much consternation in North Carolina. The Assembly had just met at Halifax. The menace of an invasion frightened them so that they prepared for serious emergencies. By an enormous stretch of constitutional power they created a Council Extraordinary, to consist of three men such as the Assembly might choose. They were to exercise all the powers of the Board of War and the Council of State. This Council and Governor Nash were invested with the full executive powers of government to continue after the expiration of the Governor's official term if the invasion of the enemy precluded the holding of elections or the meeting of the General Assembly at the usual time.[1] This Council Extraordinary was very energetic in securing subsistence for Greene's army, which was now largely dependent on North Carolina for its support in that struggle which was antecedent to the surrender at Yorktown. The executive, so frequently deprived of its power, could do little for the State or show itself worthy of respect. This frequent change of policy entailed much friction, but the necessities of the time are the extenuating circumstances to plead in its defense.

There were few active powers with which the Governor was invested. He might draw and apply money for the contingencies of government, when the Assembly had voted it; grant pardons except where there were restrictions; lay embargoes and prohibit the exportation of any commodity for a term not exceeding thirty days when the Assembly was not in session, but the Council had to consent to this. These restrictions remained for sixty years, till the Constitutional Convention of 1835. In case of death or inability or absence

[1] Iredell, I, p. 484. Caswell, Martin and Bignal composed the Council. Their salary was £200 per day.

from the State he was to be succeeded first by the Speaker of Senate, and afterwards by Speaker of the House.[1] So little confidence did this Congress have in an executive, or so much did they fear the repetition of acts of the royal executive, that it created a committee known as the Council of State to watch over and control the Governor in the execution of his office. This Council was composed of seven persons, who were elected by the General Assembly each year. Members of this Council were ineligible to a seat in either House, four members constituted a quorum, their proceedings were recorded in a journal in which any member might enter his dissent. This Council continued authoritative advisors of or rather controllers of the Governor till 1868. The Council is at present simply advisory, and no longer possesses the power it once did. A Secretary of State was likewise appointed by the Assembly, but triennially. He, too, was ineligible to a seat either in the Assembly or Council of State.

The Legislative Power of the State was vested in a General Assembly composed of two Houses, the Upper House, or Senate, and the Lower House, or House of Commons. This Senate was the smaller body, and was to be composed of one representative from each county in the State, to be chosen annually by ballot. He was required to have lived in the county one year immediately preceding his election, and to be the owner of 300 acres of land in fee. To be a qualified elector for the Senate it was necessary to be twenty-one years of age, to have resided one year in any one county of the State immediately preceding the election, and to have been in the possession of a freehold of fifty acres in the same county six months previous to the election.

The House of Commons was organized on a more democratic basis.[2] The number of representatives was greater

[1] When the constituents of Wm. Hooper asked him on his return home what power they had given the governor, he replied, "Only power enough to sign a receipt for his salary." Wheeler: p. 288.

[2] The name has since been changed to House of Representatives, but the old name is still inscribed above the Hall door.

for it was to be composed of two representatives from each county, and one each from the towns of Edenton, New Berne, Salisbury, Halifax and Hillsboro. All were elected annually. Members of the House of Commons were required to possess only 100 acres of land either in fee or for life. To be an elector in the county, it was not necessary to possess lands, but simply to be twenty-one years of age, to have resided in the county one year previous to the election, and to have paid public taxes. The franchise in the towns entitled to representation was somewhat different. "All persons who possessed a freehold in the town, and also all freemen who had been resident of such a town for twelve months previous and at the day of election, and who had paid public taxes, were entitled to vote." No one was allowed to vote in both town and county.

As has been before stated, the Royal Government was more favorable to a wide suffrage than the Whig Government. Under the Royal Government it was extended to "inhabitants;" under the Provisional Government to "freeholders;" under Constitutional Government, there were various restrictions, but especially a land qualification. But it must be borne in mind that land was very cheap, and that with a few dollars a freehold or a large estate might be secured. As the State grew great inequalities sprang up on this basis of representation, which were not corrected till 1835, when the basis was modified. The old basis of territorial representation was amended by substitution of that of population and taxation.

Annual Elections were strongly contended for. Both parties favored them. The conservative party had little confidence in any of the Constitutions that had been formed by the different colonies, but thought that annual elections would be some check on the oppressive tyranny of an oppressive Legislature. The ultra-democratic party believed that where annual elections ended, there tyranny began. This same doctrine was proclaimed more than half a century later, when biennial elections were under consideration.

There was no constitutional requirement as to how often or when the Assembly was to meet. Twice a year was the custom. Neither was there established a seat of government. The Assembly went from town to town. Different towns were anxious for it, and this served to beget jealousies. It was not till 1788 that a permanent seat of government was selected, and the city of Raleigh was created.

In the early Assemblies the popular party predominated, and much complaint is heard of irrational conduct.[1] The General Assembly also kept control over the appointment of military offices of importance. Generals and field officers of the militia and all officers of the regular army were appointed by the General Assembly. They chose delegates to the Continental Congress annually, and the Constitution allowed them to hold office only three years out of six. It also declared that they were to be selected only so long as it was deemed necessary.

Judiciary.—When the Constitutional Convention of 1776 met, North Carolina had been practically without courts since 1773. During the Provisional Government the Provincial Council and the Council of Safety had served as a judiciary. Though courts and court laws had been so much discussed during the last days of royal rule, this Constitutional Convention was slow to act. The unsettled condition of the times did not favor a full understanding of what was best for the State. Realizing the difficulty, the convention postponed the creation of a judiciary. It contented itself with declaring that the judges should be elected by the General Assembly, and should hold their offices during good behavior and receive adequate compensation. Whatever system might be adopted later, the convention determined that it should be dependent on the Legislature, for it gave no guarantee that the offices of the judges might not be abolished or their salaries diminished. The Constitution established justices' courts, but the justices were appointed

[1] Letters of Iredell.

by the Governor upon the recommendation of the General Assembly. To empty the crowded jails, the Assembly ordered temporary Courts of Oyer and Terminer to be held in several districts, and they were held during the next spring.

There were some who wished to establish the judicial system at once, but as has been stated, other judgment prevailed. At the first meeting of the General Assembly in the next year, April, 1777, these efforts were renewed, but in vain. The affairs of the province were still too much disturbed. The chief interest lay in that greater struggle which was being waged for American independence. The matter was postponed till the second meeting of same year, November, 1777, when a permanent court system was created. The system established bears close resemblance to the courts under the Royal Government.[2] The State was divided into six districts;[3] in each district court was to be held twice a year, presided over by the three judges[4] elected by the General Assembly. Equity jurisdiction was not bestowed on the court till 1782. The judges appointed the clerks of the courts in the various districts, and they, too, held their office during good behavior. This court contests with other States the honor of declaring void the acts of a Legislature because of their unconstitutionality.[5] But these courts were

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[1] It was at first proposed to elect these justices by popular vote, but it was decided that countless inconveniencies would arise by this method. More than a century has passed but the question of the election of justices is still a living issue. Iredell, I, p. 338

[2] It is so nearly a copy of the Act of 1767 as to suggest the probability of having been drafted by the same lawyer. Battle: Supreme Court, N. C., Reports 103.

[3] Wilmington, Newbern, Edeton, Halifax, Hillsboro and Salisbury.

[4] Samuel Spencer of Anson, Samuel Ashe of New Hanover, and James Iredell of Edenton. Iredell served one year and resigned, being succeeded by John Williams of Granville. This was the constitution of the court till the death of Spencer in 1794. Ashe was elected Governor in 1795, and Williams died in 1799.

[5] At the May term of 1786, an action was brought for the recovery of a house and lot in Newbern, the party in possession having purchased it from the commissioners of forfeited estates. The Legisla-

district courts corresponding to the present Superior Courts. There was no Supreme Court with appellate jurisdiction. The Supreme Court as it exists at the present time has been a slow subsequent growth.[1]

The Constitution not only established a form of government, but it also marked out the policy of the State in regard to certain institutions. In regard to religion, it declared that there should be no established[2] Church, and that every man should worship God according to the dictates of his own conscience.[3] Though the makers of the State Constitutions

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tive Act required the court to dismiss all actions against one holding under a title derived from the State by a deed from the commissioners. Nash, for the defendant, moved the dismissal of the suit. The court *refused to dismiss* at this session, and left the matter unsettled. In August of the same year James Iredell, a former member of the Court, wrote a lengthy letter maintaining that it was proper to overrule the motion. At the May term, 1787, the Court separately but unanimously overruled the motion to dismiss. Several States claim the credit of priority in this. Thayer: Cases on Constitutional Law, Part I, pp. 79, 80; Coxe, Jud. Powers and Unconstitutional Legislation, p. 248 *et seq.;* McRee's Life and Correspondence of Iredell.

[1] In 1799, James Glasgow, Secretary of State, and others were charged with fraudulent issues of land warrants. The Legislature ordered the courts to meet twice a year in the capital of the State, Raleigh, for the trial of such cases and incidentally of appeals that had accumulated in district courts, the Act continuing to 1802 only. This Act as regards appeals was, in 1801, continued for three years more, and the court was styled "Court of Conference." In 1804, this was made a court of record; in 1805, its name was changed to "Supreme Court;" in 1810, the judges of the court, were required to elect a Chief Justice. In 1818, the Supreme Court as contemplated in the constitution of 1776, was established. Judge Walter Clark in Green Bag. 1893. IV, 459.

[2] Section 34, which declares against a church establishment, may be found in sections XVIII and XIX of the New Jersey Constitution. The Orange county and Mecklenburg county instructions declare against establishment for religious freedom. C. R. X, p. 870g.

[3] Section 19 of the Bill of Rights is found in Penn. Declaration of Rights, Sec. 2. The Mecklenburg and the Orange instructions also declare for the free exercise of religion. These instructions were

were willing to grant religious toleration, they were equally watchful to guard against ecclesiastical influence in legislation. Many of the States declared the clergy ineligible to any civil office or to a seat in any legislative body.[1] The Constitution of 1776 declared that no clergyman in the exercise of pastoral duties might have a seat in the Senate, House of Commons or Council of State.[2] The 32d article of the Constitution excluded from office all persons denying the being of God, or the truth of the Protestant religion, or the divine authority of the Old and New Testament, or holding religious views incompatible with freedom. In the requirement of religious tests the Constitution makers failed to show the breadth of charity which had characterized their actions. These restrictions were never rigorously enforced, but at the time of their adoption they represented the views of many persons.[3] The debate grew so warm over this clause that there was danger of undoing everything. But as the measure was approved by a prominent and influential ecclesiastic, it was adopted.[4] In North Carolina the clause

given to the delegates to the Constitutional Convention. Those of Mecklenburg are in the handwriting of Waightsell Avery, and those of Orange of Thomas Burke. C. R. Vol. X, p. 870 *et seq.*

[1] The Constitutions of Georgia, South Carolina, and New York so declare.

[2] David Caldwell, of Guilford, is said to have been the writer of this clause and to have secured its adoption. Moore, Vol. I, p. 228. A similar section is found in the Delaware Constitution, Sec. 29,

[3] The historians of the State have ascribed to David Caldwell, a Presbyterian minister, the authorship of this section. While he doubtless championed it, the Mecklenburg instructions advised their delegates to vote for the following clause: viz., "That any person who shall hereafter profess himself to be an atheist or deny the being of God or shall deny or blaspheme any of the persons of the Holy Trinity or shall deny the divine authority of the Old and New Testaments or shall be of the Roman Catholic religion shall not sustain, hold or enjoy any office of trust or profit in North Carolina." C. R. Vol. X, p. 870d. These same instructions forbid freedom of worship to "idolatrous worshipers."

[4] Georgia and South Carolina required in some cases a Protestant qualification, while Pennsylvania, Delaware, and New Jersey showed their Protestant sympathies in their Constitutions.

was never used for the purpose of persecution, and Catholics, Jews and ministers were alike elected to responsible places.[1]

This Constitution also declared that the Legislature should establish a school or schools at which the youth could secure instruction at low rates; and that all useful learning should be encouraged in one or more universities. This clause, which was copied from the Constitution of Pennsylvania, section 34, gave birth to the present University of North Carolina, and at a later date to the public-school system.[2] Thus early did the State recognize the importance of instruction, but the aristocratic element in the State was as yet too predominant for the State to exercise itself in behalf of popular education.

Authorship of the Constitution.—American Constitutions are compromises; they did not spring full-grown from the brain of any one man. . So thoroughly had many men studied the nature of government that it was impossible for one man to impose his views upon a convention. The records of the debates in the Federal Convention enable one to establish the authorship of the Federal Constitution, but this cannot be done in North Carolina, for there is no record of the discussions upon its Constitution. As in the Federal Convention, so it was in the State Convention; there were two parties, and the Constitution shows the influence of each. Not one man, but many, aided in making it. To

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[1] Wm. Gaston, a devout and consistent Catholic, was a member of the House of Commons, and its Speaker of the State Senate, Congressman, and Associate Justice of the Supreme Court of the State before this 32nd article was repealed. Louis Henry, a Jew, was elected to a seat in the General Assembly but was not allowed to take his seat, though he was permitted to make his defense on the floor of the Assembly. Josiah Crudup, a Baptist minister, though elected to the General Assembly, did not take his seat because of the Constitutional requirement.

[2] In the Pennsylvania clause it is required to establish schools in every county. The Mecklenburg instructions asked for an endowed institution in their county. C. R. Vol. X, p. 870.

Thomas Jones, of Edenton, more than to any other man have the historians of North Carolina ascribed the making of the Constitution. The Constitution contains elements both conservative and radical. Samuel Johnston was the conservative leader, and one of the most powerful and influential men of the province. He was not a member of this convention, but he was present in his capacity as one of the treasurers of the province. Mr. Jones was his intimate friend, and both lived in the same town. Johnson saw the Constitution before it was adopted, and criticised a certain passage, which was afterwards changed. But it is not possible to say how much influence Johnson exerted through Jones. Johnson was not at all pleased with the Constitution, and congratulated himself that he was not a member of the Congress. He said the Constitution was as good as that adopted by any of the other States, but that they were all bad. To him is probably due the conservative tone of the Constitution. Others have claimed that Caswell was so popular that he dictated the principles, if not the very words of the Constitution. This was simply a tradition, but it fits in very well with the observation made above, that the Bill of Rights was very largely copied from that of Maryland.[1] Caswell was a native of Maryland. He was undoubtedly very popular, having received the thanks of the Provincial Congress for his gallantry at Moore's Creek. He was also elected the first Governor.

There is no denial of the influence that these men and others had in shaping and giving direction to the machinery of government. Some of them were scholars, having studied

[1] Jones had been a member of the two previous Congresses and had served on the Committees on Government. He was a lawyer, shrewd and astute, and a member of the committee on civil government in the Constitutional Convention. The presiding officer, Caswell, was chairman of the committee, but Th. Jones was its mouthpiece, making its reports to the Convention. He is often also found introducing measures to put the new government into operation. Samuel Johnston alluded to the Constitution as "Jones' Constitution."

at the best institutions in America and Great Britain, but the condition of society in the province was that of a frontier State.[1] The province had been making rapid strides in material advancement, but there had been little inclination or opportunity for philosophic studies.[2] Such being the circumstances, the province did what was both wise and natural, consulted a political philosopher, John Adams, of Massachusetts, in regard to the new government.[3] In the winter of 1776 Adams wrote his "Thoughts on Government," and sent copies of it to many of his personal and political friends.[4] The delegates from North Carolina to the Continental Congress at this time were Hooper, Penn and Hewes. Adams alludes to John Penn as "my honest and sincere friend." It is very improbable to suppose that these men did not see a copy of this pamphlet. Hooper and Penn had both been elected members of the Fourth Provincial Congress, the first Congress to discuss a Constitution. They attended this Congress, and both were made members of the committee on the form of government.[4] Furthermore, it is claimed that

[1] Debates in Convention of 1835, p. 318. Moore: II, p. 226. Judge Toomer said in the Convention of 1835, that it was a tradition that Caswell was the author.

[2] Willie Jones had studied at Glasgow and Avery at Princeton.

[3] It was not until May 10, 1776, that the Continental Congress advised the States to form governments such as suited them for the administration of civil affairs. Before this time John Adams had been agitating the matter, but the Continental Congress was slow to pass a measure that would commit them irretrievably to the course of revolution. Various States, however, had had the matter in contemplation, but they knew not how to pass from colonial government to independent States; they feared that the transition might result in anarchy. But Adams and others knew that the colonial governments were fast crumbling into ruins. Adams: Vol. IV, p. 191.

[4] In January, 1776, George Wythe, of Virginia, spent an evening with Adams and in the conversation told him of the feeling in the provinces and the difficulty of transition, that the provinces knew how to get rid of the old government but did not know what to substitute. He, furthermore, asked Adams to write an outline of a form of goverment suitable for these provinces. Adams consented, and the result was his "Thoughts on Government." The article was

Mr. Adams sent his "Thoughts on Government" to Thomas Burke, Orange County, North Carolina, who was a member of this Convention and of the Committee on Government.[1] It is also maintained that early in the year 1776, the delegates from North Carolina were authorized to apply to Mr. Adams for his views on the nature of the government it would be proper to form in case of dissolution, and that Mr. Adams replied by letter to John Penn in which are put about the same ideas as are found in the pamphlet, and that another letter of the same kind was sent to Thomas Burke.[2]

There is internal evidence that suggests, if it does not prove, that the plan of John Adams was well known to these law-makers at Halifax. Though the proceedings of the Convention make no mention of Adams's name, yet the outline of the form of government presented to the Provincial Congress in April, 1776, bears a very close resemblance to the plan outlined in Adams's "Thoughts on Government," and his letter to Penn.[3] But this plan was neither adopted nor rejected; the committee made its report and was excused. Another committee was at once appointed, April 30, 1776, to prepare a form of temporary government to continue until

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shown to Richard Henry Lee, who asked permission to have it printed. Adams gave his consent, but requested that his name should not be used, as he did not wish to be accused of advising a course to which, if they once committed themselves, would stop short of nothing less than independence. Adams: Vol. IV, p. 191.

[1] C. R. Vol. X, p. 516.

[2] University Magazine, 1857, IV, p. 259.

[3] The letter to Penn was not discovered until 1814, when John Taylor of Caroline county, Virginia, published it as his inquiry into the Principles and Policy of the Government of the United States. John Taylor was the son-in-law of Penn. This letter as published by Taylor bears no date, and Mr. Adams did not keep a copy of it. The letter to Burke was not discovered until 1846, when Governor Burke's papers came into the hands of the State Historical Association. Adams: I, 209.

the next session.[1] Mr. Burke was made chairman, and Penn and Hooper members.[2] The further consideration of a Constitution was postponed until the next session of the Congress, November, 1776, when a complete form of government was adopted. It also resembles Adams's outlines.[3]

[1] The outline proposed to the previous Provincial Congress was as follows :

a. A House of Representatives of the people—all free householders of one year's standing to vote. The Adams' plan proposed a House to represent the people but did not specify electors.

b. A Legislative Council to consist of one member from each county and to sit as Upper House and to be a check on House of Representatives, and none but freeholders to be allowed to vote for councilmen. The Adams' plan recommended a Legislative Council which was to be a check on the House of Representatives, but that for the present its members should be elected by the House of Representatives, and in times of more tranquillity by the freeholders.

c. An Executive Council to consist of a president and six councillors to be always sitting. The Adams' plan proposed a Governor and Privy Council which Council was to be selected from the Legislative Council and that six or seven were to constitute a quorum. This Council was to advise the Governor in the exercise of all his power.

d. These officers were to be elected annually, but Th. Jones wrote that it was probable the president might be allowed to serve three years out of six. This was also contained in Adams' suggestion.

[2] Penn and Hooper had come down from Philadelphia to attend the Congress.

[3] The Adams' plan and the form of government finally adopted agree in the following respects, that the Assembly should be composed of two Houses, have the power of electing the Governor, Attorney-General, Treasurer, and Secretary of State ; and impeaching ; that elections should be frequent ; that the Governor should be elected annually, but might serve three years out of six ; that the other officers, Attorney-General and Treasurer, were to be elected annually; the Secretary of State was by the Constitution to be elected triennially, and Adams had suggested triennial elections ; that these officers were to be elected by joint ballot of both Houses ; that there should be a council to advise the Governor ; that the Governor should be commander of the militia, and have the power of granting pardon and reprieves ; that the judiciary should be independent of both the legislative and the executive and should serve for term of life or good behavior, and should be liable to impeachment ; that sheriffs should be chosen in the counties by freeholders ; that all courts should run

The influence of John Adams and his "Thoughts on Government" upon the form of government instituted for the State was through Burke and Penn.[1] The government established in North Carolina bears resemblance not only to the plan of John Adams, but also to the Provisional and Colonial Governments which had preceded it. It was formed both by growth and by adoption. The advice of Adams was acceptable, because it preserved the historical continuity of provincial growth. The men who composed the convention at Halifax were brave, earnest and sincere, but above all else practical; they were men of action rather than theory, of the forest and plain rather than the closet and study. The time came when they wanted a Constitution, and like practical men they took the best they could find. The wisdom of their action is shown in the fact that not even an amendment was made to the Constitution for fifty-nine years.

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in the "name of the Colony or State of North Carolina," and that indictments should conclude, "against the peace and dignity of the same."

[1] Of the two counties which sent instructed delegates to the Constitutional Convention, Orange was one, and this county was the home of both Burke and Penn. The other county was Mecklenburg, which is in the same section of the State. These instructions resemble in some particulars the Adams' plan and the Constitution adopted. The instructions from Orange county are in the handwriting of Th. Burke. Both these counties urged that whatever form might be adopted it should be submitted to the people in every county for adoption or rejection, but there was probably neither inclination nor time to do this. It was left for Massachusetts, the home of Adams, to be the only State to submit this form of agreement to the people.

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